

A MESSAGE FROM THE CHIEF ADMINISTRATIVE JUDGE

HE MOST EFFECTIVE WAY TO FULFILL the Chief Judge's vision of a modern, technologically advanced court system and to achieve the full potential of e-filing for all concerned is to proceed on a course that is ambitious but reasonable. That is precisely what the legislative proposal presented here seeks to accomplish (see Appendix A). The entire e-filing program deserves to be a permanent part of the system of justice of our state. By means of this proposal, the Chief Administrative Judge will be in a position to move ahead with e-filing with the greatest possible efficiency and to ensure that the Bar, the court system and the County Clerks can reap its great benefits. As has been the practice consistently since 1999, the Chief Administrative Judge will continue to consult with the Bar, interested agencies and groups, and the County Clerks before taking action.

After 16 years of experimenting with e-filing, it is high time to move ahead with the boldness and the efficacy that our present situation requires and to end the outmoded constraints that accompanied the growth of e-filing until now. Broader use should be made of mandatory e-filing, as was done by the Federal courts (which took half the time it has taken New York to reach only its present level of use). We have seen the immense benefits and efficiencies of e-filing, and we have found that it produces very few adverse effects, against which, in any event, the rules would provide protection.

With staffing in the courts much reduced, resources in short supply, and the future fiscal situation still uncertain, it is critical that the courts find ways to significantly improve efficiency with the resources that currently exist. We owe it to the taxpayers to achieve the greatest productivity possible with the tax dollars provided. E-filing is a perfect way to do just that.

It is also vitally important to the court system of our state and to the state generally that New York, even in difficult times, remain, as it has been historically, a national leader in the administration of justice In today's digital world, this must include the use of advanced technology. E-filing constitutes an extraordinary tool that can allow the courts to achieve increased efficiency and productivity at a critical moment, while at the same time bringing greatly increased convenience to lawyers and the unrepresented while saving them considerable time and expense. This is truly a winning strategy for all concerned. We must not forgo this critical opportunity to take full advantage of the immense benefits this technology has to offer for our courts and for the people of New York. The time has come to fully embrace e-filing and move wholeheartedly towards our digital future. —Dated: March 16, 2015

HON. A. GAIL PRUDENTI

CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK

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INTRODUCTION



the Governor, and the Chief Judge of the State of New York, pursuant to chapter 367 of the Laws of 1999, as amended, to describe and evaluate the State's experience with the electronic filing program for commencement of actions and proceedings in New York State courts in civil, criminal and Family Court matters and the filing and service of documents therein, and to set forth recommendations for further legislation in this area.²

Since the New York State Court System first began experimenting with electronic filing over 15 years ago, the program has expanded significantly and has met with tremendous success. E-filing's ability to benefit the bench, the County Clerks and all sectors of the bar by enhancing efficiency and reducing costs is undeniable. With the advent of e-filing, the time and expense of serving other parties or making numerous trips to courthouses to file and retrieve papers is becoming obsolete. We estimate that universal e-filing could result in total overall savings to the courts, litigants, the

bar and county clerks of over \$300 million a year, while also helping to preserve the environment. If New York is to reap these important benefits and retain its position as a cutting-edge place to live and do business, we must embrace the digital future and move forthrightly towards statewide, paperless filing.

This means ending the "pilot" nature of the efiling program and, along with it, any "sunset" provisions. Current features of the e-filing program are scheduled to expire on September 1, 2015. It is vital to the future of the state court system and to the litigants and attorneys who depend upon it for the effective administration of justice that this program continue beyond this date, and that the state courts set their sights on further expansion of e-filing. As Chief Judge Jonathan Lippman stated in his 2015 State of the Judiciary Address, "It is time to end the 'experiment,' fully embrace modern technology, and by statute make e-filing a permanent part of New York practice." We hope that this report will contribute to the achievement of those goals.

See chapter 416 of the Laws of 2009, chapter 528 of the Laws of 2010, chapter 543 of the Laws of 2011, and chapter 184 of the Laws of 2012.

This report provides information on the entirety of the e-filing program for New York State and fulfills the obligations under current law to submit a report on e-filing generally and a report on the development of e-filing programs in criminal and Family Court Act cases.

EXECUTIVE SUMMARY



THE CHIEF JUDGE HAS ARTICULATED A VISION for a modern and efficient state court system that fully harnesses the power of technology. Central to this vision is embracing e-filing as the standard way we do business:

Over the past several years, technological innovation and automation have come to play an increasing role in improving both internal court operations and our interface with litigants and the public.... But to harness the full power of technology and all it has to offer, the key is to automate our primary business — the filing, management, and resolution of cases. Universal e-filing will increase the efficiency and productivity of our courts, while also reducing costs and saving time for lawyers and litigants. ... [This] is the very least that we should do to move the courts boldly and efficiently into the 21st Century.³

As detailed in this report, the New York State Court System has been working tirelessly to make this vision a reality.

New York's experience with e-filing began carefully and incrementally. In 1999, the first year in which e-filing was authorized by legislation enacted at the request of the Judiciary, not a single case was filed electronically and in the early years thereafter progress was quite slow. We have left those days far behind. To date, over 822,000 cases have been e-filed. At the current rate, more than one million cases will have been e-filed by the end of 2015. Over 6.4 million documents have been e-filed. More than 58,000 attorneys and others have become registered users of the New York State

Courts Electronic Filing System ("NYSCEF"), the system through which e-filing takes place in New York. Most of this progress has oc-

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[E]-FILING SHOULD BE MANDATORY in all proceedings in all courts. Its use makes service and filing of papers far easier and less expensive for practicing lawyers as well as for the court system.

Adoption of e-filing is an effective use of a now well established technological tool that benefits everyone.

- New York State Bar Association

curred since 2010, when mandatory e-filing was first introduced in New York pursuant to legislative authorization enacted in 2009.

[T]HE OVERWHELMING RESPONSE BY NYSTLA MEMBERS ...

HAS BEEN POSITIVE. E-filing has facilitated the efficient representation of clients, and brought the practice of law into the twenty-first century.... NYSTLA is strongly in favor of further expanding the e-filing program.

- New York State Trial Lawyers Association

E-filing in the state courts is an incredible success story. Without question, e-filing has proven to be reliable, efficient, convenient and secure. The experiences of attorneys and other users, courts and County Clerks with mandatory e-filing since its introduction have been overwhelmingly positive and productive. The benefits of e-filing are significant and far-

³ Hon. Jonathan Lippman, *State of the Judiciary Address 2012*, at pp. 18-19.



THE DECISION TO GO TO MANDATORY E-FILING WAS ONE OF THE BEST DECISIONS EVER

MADE for this Clerk's office. I look forward to adding more case types to our mandatory e-filing requirement in the future and see more counties make the move to court filing thru NYSCEF.

—Hon. Malcolm Merrill, Deputy County Clerk, Onondaga County

reaching. For counsel, e-filing greatly simplifies the filing and service of documents and makes the case file accessible online to all counsel of record at any time and from anywhere. In addition, e-filing sharply reduces record storage and retrieval costs, eliminates

administer their inventories — enabling easy access to case files even on the weekends from home. On top of all of these benefits, the result is a greener, more environmentally responsible system of justice.

The organized Bar and attorneys generally recognize these significant benefits. Leading Bar groups have strongly and consistently supported the expansion of e-filing in New York. Surveys of NYSCEF users also demonstrate a high level of satisfaction among them.

There have been very few complaints about efiling by litigants or attorneys. The Unified Court System has made a major effort to be responsive to the needs and concerns of the Bar, providing training programs and resources, and making help available by phone and e-mail throughout the business day, every day, for anyone who may need it. In those areas where efiling is mandatory, the e-filing rules provide the necessary flexibility so that unrepresented persons who wish to do so may opt out of participation in e-filing, and attorneys who lack the equipment or knowledge needed to e-file may conveniently obtain an exemption from doing so.

We are living in a digital age — a time of e-banking and the electronic submission of income tax returns (almost 114 million in the 2013 tax season),⁴ e-books and e-commerce, holiday gifts in the millions ordered and paid

THE IMPLEMENTATION OF ELECTRONIC FILING IN WESTCHESTER COUNTY HAS BEEN A TREMENDOUS SUCCESS....

[E]lectronic filing has transformed the way we do business[T]he customer eliminates the time and costs associated with getting paper filings to our office, as well as the risk that these paper filings could be misrouted along the way. There is no doubt this is both efficient and cost-effective for our customers.... We believe strongly that NYSCEF has a bright future and we want nothing more than to be the county where e-filing is comprehensive and embraced by our customers and partners in the courts.

- Hon. TIMOTHY C. IDONI, WESTCHESTER COUNTY CLERK



the burden and expense of serving papers on opposing parties and minimizes the need to travel to the courthouse.

E-filing has also increased productivity and reduced costs for both the courts and the County Clerks. E-filing enhances the efficiency and effectiveness with which Judges can

⁴ www.irs.gov/uac/More-Taxpayers-Efile-from-Home-in-2013.

for on-line, Facebook, Google and Twitter. It is almost 16 years since New York State first began its journey along the e-filing path. After so many years, during which our country and the world at large have advanced technologically by leaps and bounds, it is clearly time for the New York State courts to do the same.

In view of the demonstrated benefits of e-filing for the Bar and litigants, and in light of the proven track record of e-filing in New York through the NYSCEF system, the Judiciary is submitting a legislative proposal that would extend throughout the court system the cost-savings, improved efficiency and countless other benefits that e-filing has to offer. This proposal would extend those aspects of the program related to mandatory e-filing that would otherwise expire later this year, and make the entire program permanent. The proposal would lift the outdated constraints that weigh upon the program's administration and prevent it from reaching its full potential. The proposal would instead give the Chief Administrative Judge comprehensive authority and discretion to administer e-filing, including mandatory e-filing, and to expand it in venues, courts and case types in ways and on schedules that make the most sense for all involved. With this authority, we intend to expand mandatory e-filing to additional venues, courts and case types on an accelerated schedule, but one that will remain

reasonable and not burdensome for any stakeholder. This change will give the courts the flexibility necessary to move efficiently and ef-

THE BENEFITS [OF E-FILING] HAVE BEEN SIGNIFICANT

Electronic filing has certainly been a positive change to our operations.... [E]-filing has been successfully integrated, well-accepted and beneficial to all involved.

—Hon. Paul Piperato, Rockland County Clerk

fectively towards the vision of a modern court system, in tune with the digital age.

OVERALL, I AM PLEASED THAT WE WERE ONE OF THE FIRST COUNTIES TO PARTICIPATE voluntarily in e-filing and one of the first mandatory counties and I believe that the users in the Erie County Clerk's Office feel very positive about the system

—Hon. Christopher L. Jacobs, Erie County Clerk

Furthermore, the proposed legislation would result in the important benefit of simplifying the legal landscape insofar as e-filing is concerned. That landscape today consists of a lengthy series of complicated Unconsolidated Statutes. It is very difficult to find these statutes and, so, to determine what current re-

THE FEEDBACK WE RECEIVED OVERWHELMINGLY SUPPORTS EXPANSION OF NYSCEF,

not only to more counties statewide, but also to the Appellate Divisions, and the Court of Appeals. In addition to supporting expansion of the e-filing system, the comments indicate support for a uniform filing system, with the various Courts being limited in the amount of customization so the system is consistent state wide.

— MANAGING ATTORNEYS AND CLERKS ASSOCIATION



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OVERALL, THE MOVE TOWARDS ELECTRONIC FILING HAS BEEN POSITIVE and we look forward to expanding the breadth of cases which must be filed in this manner.

—Hon. Judith A. Pascale, Suffolk County Clerk



quirements are. In addition, the Unconsolidated Laws set forth in a complex manner a vast amount of administrative detail that ought to lie within the province of the Chief Administrative Judge and that can be articulated more efficiently and clearly in court rules. The pro-

posal will remedy this situation, by moving laws enabling e-filing from the State's Unconsolidated Laws to appropriate, and more easily accessible, sections of the Consolidated Laws.

[T] HERE HAS BEEN EXTREMELY POSITIVE FEEDBACK, which is indicative of the unquestionable support this initiative has enjoyed.... Nassau County looks to add additional case types in the near future....

—Hon. Maureen O'Connell, Nassau County Clerk





III. INFORMATION ON ELECTRONIC FILING IN NEW YORK STATE COURTS

A.THE EXPERIENCE WITH E-FILING IN CIVIL CASES IN NEW YORK

1. The Early Years; Consensual E-Filing

In 1999, at the request of the Unified Court System ("UCS"), legislation was enacted that established a pilot program to test the utility of electronic filing of court documents in certain civil cases. For a decade, consensual e-filing was authorized in particular courts, venues, and types of cases only to the extent specified in legislation. Over these years, the pilot program was modified in a variety of ways by numerous amendments to the legislation, to add both more courts and more types of cases to the program. Legislative action has been taken on this subject on 12 occasions.

E-filings are made through a single e-filing platform — the NYSCEF system — regardless of where in the state a filing is being made or the court in which the document is being filed. The same software platform, created and maintained by the UCS Department of Technology, has been used throughout the history of the e-filing program. This software, however, has undergone many changes, improvements and expansions as e-filing has evolved and as it has been brought to different courts. There are, of course, important differences in legal practice, court procedural acts, and, where applicable, Court and County Clerk operations between the courts. There are also operational differences around the state even in

the same court. Through modifications, additions, and, where needed, the development of new modules within the program, NYSCEF has accommodated all these variations.

After a decade of experience and growth, e-filing ceased to be a pilot program upon the enactment of chapter 416 in 2009. The Chief Administrative Judge was empowered by chapter 416 to issue rules authorizing a program of

THE NYSCEF SYSTEM... PROMOTES TRANSPARENCY, ACCOUNTABILITY AND CONFIDENCE in the court system as litigants, attorneys, parties, judges, court staff and the public, have equal simultaneous and contemporaneous access to all filed documents, unless of course, a court order or law restricts access to a court file or a particular document.

— Hon. Nancy T. Sunshine, Kings County Clerk

consensual electronic filing and service of documents in cases in the Supreme Court, the Court of Claims, the Surrogate's Court, and the New York City Civil Court. The rules would determine in which counties and kinds of cases this form of e-filing would be allowed. Since then, consensual e-filing has been authorized by uniform rules, which set out the procedures applicable to a particular court,⁵ and by a series of Administrative Orders of the Chief Administrative Judge, which specify in what courts

⁵ For the rules governing these segments of the program, see 22 NYCRR §§ 202.5-b (Supreme Court); 206.5 and 206.5-aa (Court of Claims); 207.4-a (Surrogate's Court); and 208.4-a (New York City Civil Court).

and venues and kinds of cases such e-filing may be employed.⁶ The most recent Administrative Order is that of November 7, 2014 (AO/210/14). This Administrative Order authorizes consensual e-filing:

- in the Supreme Court in 15 named counties in a variety of types of actions, including all kinds of actions (with narrow exceptions) in some counties and, in many others, commercial, contract, tort, and tax certiorari cases;
- in Surrogate's Court in 18 counties;
- in the Court of Claims in the Albany District (12 counties) and in the New York District (seven counties); and
- in one type of case in New York City Civil Court.

2. 2010 - 2015; Mandatory E-Filing

In 2009, Pursuant to Chapter 416, the Chief Administrative Judge was also authorized to

Under current law, a County may implement e-filing on a voluntary basis with the

thereafter through 2013 that modified the categories of permissible case types and modestly increased the courts where such e-filing would be allowed. The Chief Administrative Judge has, with the approval of the Administrative Board and in accordance with the legislative limitations, issued a series of Administrative Orders that remove the requirement of consent in certain kinds of cases in particular courts and counties. The most recent such order is the order cited above dated November 7, 2014. This order provides for mandatory e-filing as follows:

- in various categories of cases in Supreme Court in 11 counties; and
- in Surrogate's Court in ten counties, including Erie and Monroe Counties.

The mandatory case types in the ten Surrogate's Courts are probate and administration proceedings and miscellaneous proceedings re-

lating thereto. In the Supreme Court in five counties, including Erie, New York and Westchester, the mandatory categories of cases consist of all ac-

consent of the Clerk and the courts. Mandatory e-filing, however, requires an act of the state legislature. While this requirement was understandable when e-filing was a pilot program, NYSCEF HAS MATURED TO THE POINT THAT EXPANSION TO A MANDATORY PROGRAM SHOULD BE AT THE DISCRETION OF THE COURTS AND THE CLERK JOINTLY.

—Hon. Bradford H. Kendall, Dutchess County Clerk

issue rules requiring the use of e-filing (subject to certain exemptions). Specifically, the Chief Administrative Judge was empowered to eliminate in her rules governing e-filing, the requirement of consent, but that authority was narrowly circumscribed to limited groups of cases in Supreme Court in only three counties. Further legislation was enacted in each year

tions with four legislatively-enumerated exceptions (for Article 78 proceedings, and matrimonial, Mental Hygiene and Election Law matters). In Supreme Court in the other six counties, the mandatory cases are a more restricted group of matters, such as, in Nassau, commercial matters, civil forfeitures, in rem tax foreclosures, and tax certiorari cases, in

⁶ The Administrative Orders are posted on the NYSCEF website (www.nycourts.gov/efile).

⁷ The Administrative Orders now issued cover both consensual and mandatory e-filing.

Kings, Commercial Division matters and, in the Bronx and Queens, medical, dental and podiatric malpractice actions.

Since 2009, following the approach used since 1999, the Chief Administrative Judge, before deciding upon introduction of mandatory e-filing in the identified counties and courts, consulted extensively with the County Clerks in regard to Supreme Court cases, the administrative leadership and staff of each court, and the Bar, all of whom embraced the initiative. The history has been, as in New York and Westchester Counties, that courts and County Clerks wish to begin implementing mandatory e-filing for a restricted group of cases until sufficient experience is gained, for staff and the Bar, so as to make a transition to a larger group of matters most efficient and convenient.8 Where useful and necessary, UCS staff made adjustments to the NYSCEF software to accommodate the suggestions and needs of the County Clerks and courts and the Bar in regard to mandatory e-filing. This incremental implementation of mandatory e-filing has proven to work very well.

Cases have been e-filed on a mandatory basis since May 2010, beginning with commercial cases in the New York County Supreme Court. Since February 2013, the large majority of newly filed actions in New York County Supreme Court have been e-filed on a manda-

tory basis. That has been the case as well in Westchester County Supreme Court beginning from a date somewhat later. By now, as detailed in the next section of this report, many thousands of cases have been filed with the NYSCEF system in Supreme Court and Surrogate's Court pursuant to the mandatory rules and the relevant Administrative Order. From the perspectives of the courts and those of the court clerks in Surrogate's Court and the County Clerks in Supreme Court, there have been very few problems with electronic filing in these cases and no significant difficulties have come to the attention of the court system. This statement is borne out by the comments submitted by the County Clerks of counties in which e-filing is underway that are included in the Comments section of this report (Appendix B). All of the commenting County Clerks indicate that e-filing has been successful and beneficial, including those in counties in which e-filing has been underway on a mandatory basis9 and none raises any concerns about the fundamentals of the e-filing program or the NYSCEF application. Indeed, all express themselves in favor of the expansion of e-filing.¹⁰

Similarly, the response of the Bar to mandatory e-filing has been extremely favorable. The Bar has reported to us very few problems with mandatory e-filing and very few complaints have been made to us about the e-filing man-

⁸ The rule governing mandatory e-filing is 22 NYCRR § 202.5-bb.

⁹ E.g., "[t]he decision to go to mandatory e-filing was one of the best decisions ever made for this Clerk's office." Malcolm Merrill, Deputy County Clerk, Onondaga County Clerk's Office.

To the extent that the comments raise any issues, they are fairly described as a matter of "growing pains," to use a term employed by one County Clerk, that is, issues to be expected in the normal course of a transition from a long-standing mode of operation to a new, technologically-advanced one. The e-filing team has worked very hard to address these operational issues and to resolve them expeditiously and in a cooperative manner with the County Clerks, and, as many letters of comment point out, the team has done so quite successfully. We will continue to respond with diligence and energy to any issues that may surface in any county or court and in regard to any operational matters that may be of interest to any County Clerk or court.
In addition, we note that the County Clerk of New York County, the Hon. Milton A. Tingling, has been in office for only about six weeks and thus responded that he is not yet ready to offer comments about e-filing from the County Clerk perspective. The e-filing program in New York County has, as noted above, been mandatory since May 2010 and in 2014 there were a total of 35,880 new cases e-filed in that court.

date, so few indeed as to be statistically insignificant. The positive reaction of the Bar is demonstrated as well in the Comments section of this report (Appendix B), which will be discussed later. We also summarize elsewhere in this report the results of surveys of the Bar.

3. Use of the E-Filing System

E-FILING BEGAN VERY SLOWLY in New York State, which is hardly surprising for a new, innovative and technologically advanced program in an historically conservative profession. As late as 2002, only 237 cases (37 commercial and 200 tax certiorari) had been e-filed in the entire NYSCEF system, all of them in one county. As of the beginning of 2004, only 528 attorneys and others had registered as NYSCEF users.

In the years since, the pace of e-filing can be fairly said to have exploded in New York State. As of late January 2015, 822,131 cases have been e-filed with NYSCEF since inception. Through the same period, over 6.4 million documents have been e-filed. Some of these individual documents, of course, are short, but many are lengthy and any single one of them may even run for hundreds of pages. In light of the trends we have noted, we estimate that, by the end of 2015, about one million cases will have been e-filed in New York State from inception of the program.

To date, 58,217 attorneys and others have registered as users of the NYSCEF system. This figure includes unrepresented persons and attorneys appearing pro hac vice who register with NYSCEF, as well as firms serving as authorized agents for attorneys.

We have alluded to this earlier, but it is worth underscoring that the growth in e-filing has been especially marked since 2010, when mandatory e-filing first came into effect, beginning in New York County Supreme Court. Just over 75% of the cases that have been efiled since the inception of the e-filing program in 1999 have been filed from 2010 to the present. Yet, as we have noted, this concentrated growth has been accompanied by a very notable lack of complaints or negative comments from the Bar. Indeed, it appears to us that we received no more negative comments regarding mandatory e-filing than we did between 1999 and 2009 in regard to consensual e-filing. Therefore, it appears that mandatory e-filing has improved the efficiency and ease of practice in our state courts without producing any significant problems for litigants or the Bar.

4. The Expansion of E-Filing in New York — Consultation and Cooperation

Consultation and cooperation have been hall-marks of the history of the e-filing program in New York. E-filing has expanded in New York through an intensive process of consultation and communication between and among the staff of affected agencies, the courts and, in Supreme Court cases, the County Clerk, as well as with the Bar. This is a subject worthy of some elaboration.

For the court system, the e-filing effort is led by a small group of staff under the leadership of the Unified Court System's Statewide Coordinator of Electronic Filing, Mr. Jeffrey Carucci. Prior to assuming his current duties, Mr. Carucci had spent years as a court clerk in Supreme Court and thus is fully conversant with court operations and the procedures of the County Clerk's Office. This operational knowledge, and that of his staff, have proven critical to the smooth expansion of e-filing to new courts and counties. Deep familiarity with operations has also enabled the Coordinator to

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THE NIAGARA COUNTY CLERK'S OFFICE HAS SERVED AS A PARTNER WITH THE NEW YORK STATE OFFICE

OF COURT ADMINISTRATION since the passage of the original e-filing enabling legislation. We are very pleased to have been on the forefront of this major project, and look forward to moving toward a mandatory program in the future.

—Hon. Wayne F. Jagow, Niagara County Clerk

oversee very effectively the development of the NYSCEF software platform, providing operational direction to the technical staff of the UCS Department of Technology as the platform has evolved.

The Statewide Coordinator develops plans and time schedules for the expansion of e-filing to new venues where e-filing has been authorized by the Chief Administrative Judge. When a venue is identified, the Coordinator and his staff then consult closely with relevant staff in the county, at the court and, in the case of Supreme Court, the County Clerk's Office. A careful and detailed review of court operations and, in the case of Supreme Court, the County Clerk's litigation-related procedures is undertaken jointly. These extensive consultations and communications allow the e-filing staff to be certain that the procedures in the NYSCEF platform will meet the operational needs of the court and, where applicable, the County Clerk. Input is also sought from the Bar.

Sometimes, the operational review will reveal that the court or the County Clerk has a special need, such as an unusually high volume of filings of a particular type, that NYSCEF in its current configuration does not address as well as it might. In such instances, it may be necessary to make modifications or additions to NYSCEF. The Coordinator and e-filing staff have intimate familiarity with the software and its current capabilities and are in a position to identify gaps of this sort and, more importantly, to understand how modifications to the soft-

ware can be devised to satisfy the need.

A similar, but even more thorough and extended process is undertaken when e-filing is brought to a new type of litigation and court for the first time, where legal practice and court procedures may differ markedly from those in another kind of litigation and court, (as, for example, when e-filing expanded from Supreme Court to Surrogate's Court).

In that instance, after consultations between the Statewide Coordinator and his staff and the staff of the Surrogate's Court, initially in Erie County, a new module was developed and added to NYSCEF that accommodated the unique aspects of practice and operations in the Surrogate's Court. Now, an attorney filing a document goes to the NYSCEF site and indicates whether he or she is filing a document to a Supreme Court case, a Court of Claims case or a Surrogate's Court case. In accordance with that indication, the platform will route the filer to the relevant area of the software so that the case file can be located or created and the filing made thereto. The process now is a simple one, but in fact that has been achieved only because of the extensive study and consultations that staff undertook first and the modifications that were made to the NYSCEF platform as efiling has grown.

Implicit in what has been said is a vital principle that underlies the e-filing program — e-filing must take place through a single platform, the NYSCEF system. E-filing, serving and re-

trieving documents should not vary depending upon the location of the court or the County Clerk in question or the type of court involved. Were this principle not in place, e-filing would be a vast Tower of Babel. Attorneys would be plagued by the need to learn different systems and procedures depending upon whether they are filing in, say, Supreme Court or the Surrogate's Court, or whether they are doing so upstate or downstate. If a single platform were not in place the variations would make for chaos, rendering e-filing impossibly burdensome and inefficient for the Bar and for the courts, dealing a fatal blow to the entire program. As we have done thus far, so we will do hereafter — using the NYSCEF platform, but making adjustments to it so that it can accommodate all kinds of filings in different courts and in different kinds of cases. It is our intention to proceed in this way not just with regard to trial courts, but also in our appellate courts. It should surprise no one that the Bar has recommended to us that we follow exactly this principle in our work.

5. Outreach and Training

In the Period Leading up to the introduction of e-filing in a new court or county, the court and, where applicable, the County Clerk have reached out to bar groups to provide information on e-filing and access to training. The NYSCEF Resource Center provides training to the Bar in the venues affected. It also offers an ongoing weekly training course for the greater

metropolitan area of New York. It has made many presentations to bar association meetings and other gatherings.¹¹ Reservations for training sessions can be made on-line. The

THERE IS A CONSTANT COLLABORATION
OF EFFORTS between our county and
the e-filing resource center to continuously enhance the system. NYSCEF
staff is always willing to address any
concerns and provide improvements
to the system. We look forward to
continue working with NYSCEF to expand mandatory electronic filings in
all case types in Queens County.

—Hon. Audrey I. Pheffer, Queens County Clerk

NYSCEF Resource Center also regularly offers an on-line training course.

Formal training, however, often proves not to be necessary for attorneys and parties to be able to use the NYSCEF system effectively. The system is to a large degree intuitive. Furthermore, it provides explanatory material online (through "Help" and "What's This" links and a video showing the filing process) to prospective users. ¹² And, in addition to the "live" or real NYSCEF system, the platform makes available an exact replica that can be used for unlimited practice and training. With

Presentations have been made by the Statewide Coordinator for Electronic Filing and his colleagues from the NYSCEF Resource Center at many bar association meetings, including at least five Annual Meetings of the New York State Bar Association ("NYSBA"), as well as other meetings of NYSBA committees and sections. Staff have worked closely with judges and court staff and County Clerks across the state on training efforts in localities. Training courses have been presented on many occasions at courts, County Clerk's Offices, and bar associations all around the state. Training, for example, has been provided, often on multiple occasions, in Albany, Broome, Erie, Essex, Livingston, Nassau, Niagara, Onondaga, Rockland, Suffolk and Westchester Counties, and in New York City. Many articles have also been published providing information about the NYSCEF program.

¹² There is a *User's Manual* and *FAQs* on the NYSCEF site.

but a little experimentation in NYSCEF's "Training" area, many prospective users can acquire all the knowledge they need in order to e-file efficiently and correctly. Others will not even need to do this much because the NYSCEF system resembles the Federal Electronic Case Filing ("ECF") system, so that those who have e-filed in Federal court, where e-filing has been the standard mode of proceeding for some years now, will find that they already possess all the knowledge they need in order to be able to e-file through NYSCEF.

Occasionally, and, naturally enough given that we are dealing with advanced technology, an attorney may have a question or encounter what he or she perceives to be an issue when attempting to file a document in a particular case. We have given a high priority to addressing such situations in order to avoid any inconvenience to counsel and the unrepresented by maintaining a Help Desk operated through the E-Filing Resource Center. The Help Desk is available to attorneys and the unrepresented from anywhere in the state from 8 AM to 6 PM every business day by phone and e-mail. It has been overwhelmingly successful at resolving perceived issues or questions without any real trouble for users. The comments made about the Resource Center and its staff by users have been very favorable and complimentary. We are most grateful to our staff for providing this outstanding level of service, which could not be achieved without the exceptional knowledge and dedication that they have displayed

6. Exemptions from E-Filing

ONE POTENTIAL CONCERN for the administrators of an electronic filing program is whether, despite the intuitive character of the program and the information offered, some potential users might lack the equipment or knowledge neces-

sary in order to be able to e-file. Administrators and courts seek to avoid imposing any undue burden on such persons. The e-filing legislation and rules accordingly provide that, although e-filing is mandatory in the covered courts and case types, unrepresented parties may "opt out" if they wish, and can do so very simply, merely by filing a form. Similarly, any attorney who lacks the knowledge or equipment required to e-file need only file a form certifying as much to be allowed to proceed in hard-copy form.

The implementation of these exemptions appears to have caused few problems. On a relative basis, only a modest number of unrepresented parties and attorneys have filed exemption forms. For example, in 2014, 25,872 new cases were e-filed in Westchester County Supreme Court. We can assume reasonably (and maybe conservatively) that on average, there are three parties to each case, which yields an estimated total of 77,616 parties in these cases. A total of only 733–persons unrepresented parties and attorneys lacking knowledge/equipmentfiled the required form and obtained the exemption. This number is equal to less than one percent of the total number of parties to have e-filed cases in 2014 in that county.

Although we do not have precise data on this point, we estimate with reasonable confidence that at least 2,762 unrepresented persons have participated in e-filing since 2009. These are persons who could have obtained an exemption from e-filing had they wished to do so, but who instead chose to participate in e-filing. Although the NYSCEF program represents an important innovation for the state court system, it must, of course, be viewed in the light of the tremendous growth in the use of digital technology in society as a whole. There truly is a digital revolution underway (this is one case in which that word is

not hyperbole), and unrepresented litigants are in many instances active participants.

7. User Response and Bar Association Support

THE SUCCESS OF THE E-FILING PROGRAM is also reflected in surveys of NYSCEF users we con-

In addition, bar groups have consistently favored the e-filing program and have urged its expansion. See Appendix B for a summary of Bar opinion. See also the views of the Bar contained in the Comments section of this report (Appendix B).

E-FILING HAS SAVED MY OFFICE A TREMENDOUS AMOUNT OF

TIME and we continue to strongly encourage our local attorneys to take the logical step to e-filing.

—Hon. ELIZABETH LARKIN, CORTLAND COUNTY CLERK

ducted on two occasions. The most recent survey was undertaken in 2011 and was addressed to users who had e-filed cases since May 24, 2010, by which time mandatory e-filing was in place in certain cases in several counties. The respondents reported great satisfaction with the e-filing program. More than 80% reported that they were either very satisfied or satisfied with their experience with mandatory e-filing. Close to 90% said that the convenience of the NYSCEF system was excellent or good and 84.46% were either very satisfied or satisfied with NYSCEF overall.¹³ Almost 90% of those replying reported that the assistance provided by staff was excellent or good. Responses to the first survey, in 2009, had been similar.

The 2011 respondents reported that information technology was ubiquitous in the legal profession, and use by lawyers of digital technology is surely even higher today.¹⁴

8. Data Transfers and E-Filing on Appeal

IN RECENT YEARS, UCS INTRODUCED to a number of courts a new case management software application known as the Universal Case Management System. This system has not yet been introduced in the Supreme Court. The UCS efiling team is well aware of the efficiencies that will be gained when the case management system is introduced in Supreme Court, where so many cases are e-filed, and integrated with the NYSCEF e-filing program. This integration will allow data that is generated by the filing attorney in the process of commencing an efiled case or filing a document to NYSCEF to be transferred automatically to Universal Case Management to populate fields in that system. This means that the County Clerk and the court will be able to avoid a large amount of data entry labor that is necessary today and to communicate more effectively with the Bar. For example, integration would permit the case caption listing all parties to be created in Universal Case Management through automated importation of data from NYSCEF, without any data entry by County Clerk or court staff.

The UCS e-filing team has been working on this subject with the UCS Department of Technology. The Statewide Coordinator of E-Filing

¹³ Some other respondents reported themselves as neutral on the question, leaving just 5.71 % who indicated that they were dissatisfied.

Almost all 2011 respondents or their firms reported that they use e-mail in their practice (99%) and a great many use a Blackberry or like device (73 %), a desktop computer (92 %), a laptop (58.81 %), electronic legal research and internet legal research (72 % and 85.49 %), a scanner (92 %) and a cellphone (80 %). Almost 72% of the respondents had participated as counsel in a case in the Federal ECF system, and about 70% of those respondents with information reported that their firm uses the ECF system weekly or monthly.

and the Department of Technology plan, by the end of 2015, to introduce the integration of NYSCEF and Universal Case Management in Supreme Court, beginning in New York County and Westchester. This will constitute a very important step on the road toward increased efficiency and productivity for the courts and the County Clerks.

In 2013 and 2014, the UCS e-filing team was engaged in consultations with staff of the Appellate Division, with the approval of the Presiding Justices of the four Departments, and the consultations will continue in 2015. The purpose of these consultations is to develop a module that can be added to the NYSCEF program to enable electronic filing in cases on appeal. Among other things, this module will allow for the trial court record to be made available to the Appellate Division through NYSCEF and for filings on appeal to be made through NYSCEF. The Statewide Coordinator currently anticipates that the introduction of appellate e-filing will take place in the near future.

B. ELECTRONIC FILING IN CRIMINAL AND FAMILY COURT ACT CASES

UNDER CURRENT LAW,¹⁵ electronic filing is authorized in criminal and Family Court Act matters. The Chief Administrative Judge, with the approval of the Administrative Board of the courts, is empowered to promulgate rules authorizing an e-filing program in Supreme Court and County Court for (1) the filing with the court of an accusatory instrument for the

purpose of acquiring jurisdiction in a superior court, as provided by Criminal Procedure Law Articles 195 and 200, and (2) the filing and service of papers in pending criminal actions and proceedings. Such e-filing is to be voluntary. The rules may, however, require participation in e-filing in Supreme and County Courts in not more than six counties, subject to various conditions (e.g., consent of the District Attorney and of the criminal Bar).

Further, current law provides that the Chief Administrative Judge, with the approval of the Administrative Board, may promulgate rules authorizing a program of e-filing in the Family Court for (1) origination of proceedings in that court, and (2) the filing and service of papers in pending proceedings. Such e-filing is to be voluntary. The rules may, however, subject to certain conditions, require participation in e-filing in Family Court in up to six counties for certain defined categories of cases. ¹⁶ A requirement to participate in e-filing in these cases may not be introduced without the consent of interested agencies and the Family Court Bar.

Because of the complexity and scale of the efiling program statewide, and as a matter of efficiency and orderliness e-filing has become operational to date only in general civil cases, that is, cases in Supreme Court, the Court of Claims, and the Surrogate's Court. The Chief Administrative Judge has not yet proposed rules authorizing a program of e-filing in criminal or Family Court Act cases and there have therefore been no NYSCEF filings yet in these kinds of matters.

¹⁵ Chapter 367 of the Laws of 1999, as amended by chapter 543 of the Laws of 2011 and chapter 184 of the Laws of 2012.

¹⁶ The categories are: (1) the filing of a petition originating a juvenile delinquency proceeding under Family Court Act Article 3 by a presentment agency as defined in section 301.2; (2) the filing with the court of a petition originating a proceeding to determine abuse or neglect pursuant to Family Court Act Article 10 by a child protective agency, as defined in section 1012 of that Article; and (3) the filing and service of papers in these two types of proceedings where the proceeding was originated by electronic filing.

In regard to criminal and Family Court Act matters, UCS e-filing staff have thus far undertaken preliminary analysis of the operational aspects of criminal and Family Court Act proceedings so as to be in a position to explore possible technical approaches to modifications to the platform, such as a new module, that would permit NYSCEF to accommodate such matters whenever the Chief Administrative Judge should propose e-filing rules for those cases. Tentative plans for further such analytical steps in these types of cases have been discussed among relevant staff. More such work is planned for the near future, and it is hoped that e-filing staff shall be able to prepare a plan and time schedule for possible modifications to the NYSCEF platform with respect to these kinds of cases and then to pursue the necessary consultation with interested groups and segments of the Bar.

In studying e-filing in criminal and Family Court Act cases, UCS has been examining existing experimental electronic data programs in Family Court. In one such program in the New York City Family Court, data is transmitted electronically to the court by presentment agencies for inclusion in the court's case man-

agement system (the Universal Case Management System in Family Court). Another similar such program is in place in Family Court in Ontario County, involving electronic transmission of some data in support proceedings. Experience with these pilot efforts in data transfer will prove useful in planning for a future in which data entered into NYSCEF in criminal and Family Court cases can automatically be transferred to and incorporated into relevant fields in integrated Universal Case Management Systems for criminal and Family Court Act cases, thereby generating substantial labor efficiencies for the courts.

We are confident that, once rules for criminal and Family Court Act matters are proposed, promulgated and implemented, the response of the Bar and users to e-filing in these cases will be just as favorable as that of the Bar in civil cases thus far. The extensive experience with e-filing that has been gained by the court system, litigants, and the Bar convinces us that, though criminal and Family Court Act cases have particular characteristics and needs, these can and will be addressed satisfactorily by the NYSCEF system and the benefits of e-filing can be achieved in these cases too.

IV. BENEFITS OF ELECTRONIC FILING



Filing OFFERS MANY BENEFITS. These benefits have become clearer to more attorneys and litigants, as well as Judges, courts and County Clerks, as e-filing has expanded in New York. Where e-filing has been mandated, these benefits are being reaped by attorneys who in many instances may not previously have appreciated their extent.

The NYSCEF user can file documents in court at any hour of any day and do so from any point in the world at which internet access can be obtained, without the need for a trip to the courthouse. Documents can be filed whether the County Clerk's Office or the court is open or not. Documents can be served electronically at any time from anywhere instead of being delivered by hand, through a delivery service company, etc. The service of documents is greatly simplified; the act of filing an interlocutory document with the NYSCEF system immediately and automatically causes service to be effectuated on all attorneys on the case participating in e-filing. Court fees are paid via the e-filing system by credit card or bank card and this can be done at any time. An electronic case docket is created as documents are filed, which facilitates access to the case documents and provides a logical summary of case history. The case file is accessible simultaneously, at any time, from anywhere, by all attorneys who may be working on the case, however many there may be.

Furthermore, the e-filing system is very easy to learn and use and, as explained earlier, many training opportunities and resources are provided for those who may feel the need for them, although the NYSCEF system is largely

intuitive. Only commonly-used hardware and software are required. There are no fees to register as an e-filing user, to e-file documents, to examine the electronic docket, or to print filed documents should that be required; the only fees payable are the normal court fees required

WHILE THERE ARE SIGNIFICANT
MONETARY SAVINGS [to the office
of the county clerk]..., perhaps the
greatest benefits accrue to the
public and the litigants.

—Hon. Bradford H. Kendall, Dutchess County Clerk

to be paid by law in all cases. The system provides instantaneous e-mail notice to all participating attorneys and unrepresented parties when the court files a decision or order or other court document in the electronic file. Notice is provided to counsel and participating unrepresented parties whenever another party to the case files a document with the system.

For attorneys, and for Judges and legal staff, too, e-filing thus makes important steps in the litigation process vastly easier to complete than they ever were before. And, it reduces burdens on court clerks and County Clerk staff. For example, e-filing saves the County Clerk and the court from having to maintain archives of paper documents and to move paper about the court-house and the County Clerk's Office, which in some parts of the state may be located far from the courthouse. Immediate and convenient access to the case file at any time from anywhere assists the Justices and their staff.

E-filing, however, does more than bring unparalleled convenience to attorneys, courts, and County Clerk's Offices, important though that is. It yields major efficiencies that translate into large savings in costs for all participants.

For an analysis of the efficiencies associated with electronic filing and estimates of the cost savings it brings, see Appendix C. See also the comments of a number of County Clerks (Appendix B).

ELECTRONIC FILING CREATES COST SAVINGS AS ATTORNEYS CAN ACCESS THESE FILES REMOTELY. THE COST SAVINGS ACCORDED TO LAW FIRMS IS IMMEASURABLE. They no

longer have to send someone to the office for routine matters such as checking on an order or printing out a simple copy.

-Hon. Stephen J. Fiala, Richmond County Clerk



V. E-FILING IN OTHER COURTS



A. E-FILING IN THE FEDERAL COURTS

THE FEDERAL E-FILING PROJECT has moved forward much more rapidly than New York's and remains today considerably more advanced. The first prototype of the Federal e-filing system was introduced in 1995, four years before New York began its own project. Only six years later, in 2001, the rollout of the Federal ECF system began nationally. Implementation in the U.S. District Courts commenced in 2002 and in the appellate courts in late 2004.¹⁷

The Federal "Case Management/Electronic Case Files . . . project revolutionized the way in which the federal courts interact with the public and manage their cases and documents." Today, ECF is in almost universal use in the Federal courts and is a key component of the operations of the Federal courts. Federal rules authorize individual courts, by local rule, to permit or require documents to be e-filed. 19 Courts typically issue an authorizing local rule and a general order or procedures that set out the requirements and procedures governing e-filing in that court. 20 All District Courts in New York State require attorneys to e-file docu-

ments in all civil and criminal cases (with some limited exceptions).²¹

The ECF system is now in use in the District Courts (including in criminal cases)²² and Bankruptcy Courts nationwide, all regional Courts of Appeal, the Court of Federal Claims, and the Court of International Trade.²³ The volume of electronic filings continues to grow. Over 2.5 million documents are e-filed nationwide every month, and over 600,000 attorneys have used the e-filing system.²⁴ Enhancements have been continuously made to the ECF software, and the Administrative Office of the United States Courts is at work on a "next generation" of the system that will increase its functionalities for all users.²⁵

Recently, the Chief Justice of the United States announced that the United States Supreme Court, which had theretofore been an exception to the technological wave in the Federal court system, will soon join the e-filing universe. When the system is fully implemented in that court, it is expected that all filings by counsel will be made electronically and will be available to the legal community and the public without cost.²⁶

¹⁷ www.uscourts.gov/Federalcourts/CMECF.aspx.

¹⁸ *Id*.

¹⁹ E.g., Fed. R. Civ. P. 5 (d) (3); Fed. R. Crim. P. 49 (e).

²⁰ www.uscourts.gov/FederalCourts/CMECF/FAQs.aspx.

²¹ For the Southern District, see Electronic Case Filing Rules & Instructions Rules 1.1 and 1.2 (March 17, 2014). For the Eastern District, see the following: https://img.nyed.uscourts.gov/files/local_rules/MandatoryECFFiling.pdf For the Northern District, see Administrative Procedures for Electronic Case Filing (General Order No. 22), Section 2 (Sept. 12, 2014). For the Western District, see Administrative Procedures Guide for Electronic Filing, at p. 3 (April 2014).

²² www.pacer.gov/psc/efaq.html. See Fed. R. Crim. P. 49 (e).

²³ www.uscourts.gov/FederalCourts/CMECF/Courts.aspx.

²⁴ Hon. John G. Roberts, Jr., Chief Justice of the United States, 2014 Year-End Report on the Federal Judiciary (Dec. 31, 2014), at p. 6.

²⁵ *Id.* at pp. 6-7.

²⁶ *Id.* at p. 7.

B. E-FILING IN THE STATE COURTS

E-FILING CONTINUES TO MOVE AHEAD in the state court systems as well. Space does not permit a comprehensive summary. The following, however, gives some indication of the extent and nature of the significant advances that are taking place.

- ing in all civil cases. On January 1, 2014, Texas implemented its system in the district, county, and probate courts in the ten most populous counties and in all case types in all appellate courts. All courts will be e-filing civil cases on a mandatory basis by next year. Data from the e-filing system will be shared with the courts' case management system.²⁷
- IN 2012, THE FLORIDA SUPREME COURT adopted amendments to the Florida rules of court to implement mandatory electronic filing for all documents filed in all of Florida's courts. Mandatory e-filing was to be phased in over time and began in civil cases in 2013.²⁸ In a later administrative order, the Court directed that e-filing of all criminal division documents would become mandatory on February 3, 2014. ²⁹
- In THE UTAH COURTS, all papers in civil, probate, and domestic cases must be e-filed.

- All documents must be e-filed in district court criminal cases as of January 1, 2015.³⁰
- e-filing became mandatory for attorneys in various newly filed family case matters, such as dissolution, separation, and annulment cases. E-filing is mandatory in all civil cases (with some exceptions) for attorneys.³¹
- **STARTING OCTOBER 2014, THE COLORADO STATE COURTS** began a phased rollout to the judicial districts of e-filing for criminal cases. The Chief Judge of each district will decide whether e-filing should be mandatory or not in these cases.³² The Colorado Supreme Court and Court of Appeals participate in e-filing for all case types, including criminal and juvenile.³³
- In OREGON, effective as of December 1, 2014, active Oregon attorneys are required to e-file most documents in the 11 circuit courts where the e-filing system is operational.³⁴ Mandatory e-filing will begin in circuits that are not now using the system 60 business days after the court starts to do so. Mandatory e-filing is expected to begin in spring 2015 in the appellate courts.³⁵
- Beginning October 2014, all filings (noncriminal pleadings) must be made electron-

²⁷ Fact Sheet; Press Releases, Jan. 1 and 31, 2014; E-File Texas.gov - - Background & Overview, at www.efile-texas.gov/media-kit.htm.

²⁸ In re Amendments to the Florida Rules of Civil Procedure, 102 So.3d 451 (Fla.2012).

²⁹ In re Electronic Filing of Criminal Cases in the Trial Courts of Florida, No. AOSC13-48 (Fla. Sept. 27, 2013).

³⁰ www.utcourts.gov/efiling/Utah Courts - eFiling.

³¹ www.jud.ct.gov/external/super/E-Services/efile/news.htm; www.jud.ct.gov/external/super/e-services/efile/ATTY-FAQS.pdf.

³² www.courts.state.co.us/Administration/Section.cfm?Section=efilepilot.

³³ www.courts.state.co.us/userfiles/file/Frequently%20Asked%20Questions%20-%20Attorney(1).pdf.

³⁴ www.ojd.state.or.us/SCA/WebMediaRel.nsf/Files/Mandatory_eFile_Notice_to_the_Bar.pdf/\$File/Mandatory_eFile_Notice_to_the_Bar.pdf.

³⁵ www.ojd.state.or.us/SCA/WebMediaRel.nsf/Files/FAQ_Mandatory_eFile_11-20-14.pdf/\$File_Mandatory_eFile_11-20-14.pdf.

- ically in the trial and appellate courts in one county in **Maryland**. The e-filing system will thereafter be rolled out on a mandatory basis to all counties, county by county. The e-filing system will be a statewide system that will be integrated with an electronic case management system for the courts.³⁶
- IN SOUTH DAKOTA, e-filing is mandatory and universal for attorneys in criminal subsequent case filings as of January 28, 2015 and civil initial and subsequent filings as of February 25, 2015. E-filing is integrated with a statewide case management system.³⁷
- a statewide electronic filing system and integrated case management program. After introduction of the case management system, e-filing was scheduled to be introduced in November 2014 in the Superior, Family, and District Courts. All courts and case types, including criminal, are to convert to the case management and e-filing systems by 2016. E-filing is to be mandatory for all, except unrepresented litigants, prisoners or those who obtain a waiver. The unrepresented may e-file if they wish to do so.³⁸

³⁶ www.courts.state.md.us/mdec/efiling.html; see also the Attorney FAQs on this page.

³⁷ Order of Supreme Court of South Dakota, In re Adoption of Universal Circuit Court Electronic Filing Rules (Sept. 18, 2014), www.ujs.sd.gov/media/odyssey/Mandatory_Order.pdf.

³⁸ www.courts.ri.gov/efiling/Pages/default.aspx; www.courts.ri.gov/efiling/PDF/FAQ.pdf.

VI. PROPOSED LEGISLATION

part of the e-filing program sunsets this fall. Beyond that, though, the history summarized above leads the Judiciary to conclude that further progress in e-filing needs to be made in the near future and it can without a doubt be made if the necessary legislative steps are taken. The Judiciary submits its proposal for legislation on e-filing, which is Appendix A hereto. Set out below is a summary of the proposed legislation and a statement of the supporting rationales.

A. THE PRINCIPAL ELEMENTS OF THE LEGISLATIVE PROPOSAL

THE FOLLOWING ARE THE MAIN ELEMENTS of the Judiciary's legislative proposal:

- 1. The mandatory aspects of the current e-filing program will sunset by operation of law on September 1, 2015. This proposed legislation would make the entire e-filing program permanent hereafter.
- 2. By legislation enacted in 2009 (chapter 416), the Chief Administrative Judge was authorized on a permanent basis to issue rules providing for consensual e-filing in Supreme Court, the Surrogate's Court, the Court of Claims, and the New York City Civil Court. The Chief Administrative Judge was also authorized to issue rules that eliminate the requirement of consent, but that legislation and subsequent enactments severely limited the kinds of cases, the courts and the venues with respect to which such rules can be issued. The Judiciary's proposal would confer on the Chief Administrative Judge authority to issue rules gov-

- erning electronic filing and to administer the e-filing program without limitations by statute on the kinds of cases, the courts and the venues in which e-filing rules can be applied, both in mandatory and consensual cases.
- **3.** Under the authority of the new legislation, the Chief Administrative Judge intends to accelerate the expansion of mandatory e-filing to new courts, venues and types of cases, but in a way that makes sense for, and is comfortable for, the court system, the County Clerks, and the Bar, without burdening anyone.
- 4. Throughout its implementation, the e-filing program has been governed by a lengthy series of enactments that are part of the State's Unconsolidated Laws. The Judiciary's proposal would replace these Unconsolidated Laws with provisions in the Civil Practice Law and Rules, the Criminal Procedure Law, the Judiciary Law and various Court Acts.
- 5. The proposed legislation would greatly simplify the statutory framework for electronic filing in the future, removing the administrative detail set forth in current law and leaving the subjects covered for action by the Chief Administrative Judge by rule. Rules will be issued providing for exemptions from mandatory e-filing for unrepresented persons and attorneys lacking the necessary equipment or knowledge, and addressing other appropriate matters.
- **6.** To ensure that the Legislature, the Governor and the Chief Judge are fully informed about e-filing, the legislation proposed would require the Chief Administrative

Judge to submit annually to the Legislature, the Governor and the Chief Judge a report summarizing the development of the electronic filing program and the plans for its future operation and expansion.

B. THE REASONS FOR THE PROPOSED LEGISLATION

THE YEAR 2015 marks the 16th year since the Judiciary first proposed legislation to authorize a pilot project of electronic filing in the New York State courts. Sixteen years is a long time. It is an especially long time — an entire age where technology is concerned. The NYSCEF e-filing program has clearly been an outstanding success thus far, but much work remains in order for the court system of New York, the Bar, and all stakeholders to reap all the benefits that e-filing technology offers. Therefore, the pace of our rollout of e-filing must be accelerated. The mandatory Federal ECF system began to be rolled out nationwide only six years after the system was first introduced, and the Federal courts, as the Chief Justice recently reported, are hard at work right now on a "next generation" of the Federal system, while we, after 16 years, continue with the roll-out of our first.

After so long a period of gestation, and given the undeniable success of the e-filing program, we in New York need to move to the next stage of progress. The Judiciary believes, that this calls for the following:

FIRST, the time has arrived for the e-filing program in all its aspects to be made permanent.

SECOND, the administration of the e-filing program, which, after all, is a matter of the administration of the courts of the state, should at this point be left to the sound discretion of the Chief Administrative Judge;

the Chief Administrative Judge should not be obliged to return to the Legislature and the Governor to obtain a further legislative enactment whenever the Chief Administrative Judge wishes to add a particular county to the list of authorized mandatory e-filing venues or to add a category of case to the previously-authorized mix.

THIRD, mandatory e-filing must be expanded.

FOURTH, e-filing legislation should be simplified by the replacement of Unconsolidated

Laws and the enactment of straightforward authorizing provisions in the Civil Practice

Law and Rules, the Criminal Procedure Law, the Judiciary Law and various Court Acts.

The Advisory Committee on Civil Practice of the Chief Administrative Judge, which is made up of distinguished litigators with experience across a broad spectrum of litigation in this state, recently studied the e-filing program and issued a report and recommendations in favor of the approach embodied in the legislative proposal included in this report.

1. E-Filing Should be Made Permanent

THE E-FILING PROGRAM in all its aspects should be made permanent. Digital technology is obviously here to stay and consensual e-filing has been permanent since 2009. The record of e-filing is extremely positive and its benefits are many and substantial. In particular, mandatory e-filing has been overwhelmingly successful over an extended period of time. Such e-filing provides the path by which the benefits of e-filing can be brought to the greatest number in the least amount of time, but yet in a reasonable and non-burdensome way for the Bar, the courts and the County Clerks. After 16 years, there is no good reason to delay progress and to continue to make part of the program tenta-

tive. The record shows that the worries that may have existed in 1999 about the possible impact of e-filing on unrepresented litigants and attorneys in solo or small firm practices at the least are no longer tenable. The e-filing rules under the proposed legislation will adequately address the situations of those who may not be able to cope well with e-filing. Thus, we should recognize that e-filing in all its aspects, including, where mandated, should be a permanent part of the administration of justice in New York State.

2. E-Filing Should be Administered by the Chief Administrative Judge

In the early years of e-filing in New York, the Legislature, out of an abundance of caution, and perhaps due to some lack of familiarity with the still-somewhat-new technology at the heart of the program, severely restricted the program's administration. Many administrative aspects of the program were addressed by legislation, including enumeration of the specific courts, venues, and types of cases in which e-filing would be permitted. Thus, the Chief Administrative Judge was obliged to return to the Legislature and the Governor repeatedly to make administrative changes, such as whenever the Chief Administrative Judge wished to respond to the entreaties of a county to be added to the authorized group or to add a case type to the authorized list. The current legislative proposal would, if enacted, be the thirteenth piece of legislation on this subject. In marked contrast to this approach to the administration of e-filing, the Federal rules authorize individual Federal courts, by local rule, to permit or require e-filing.

After a decade, the Legislature recognized in part that the sound and effective administration

of the e-filing program indeed required that the legislation allow the Chief Administrative Judge to carry out the administration of the efiling program without the need for legislative approval of administrative steps. Chapter 416 of the Laws of 2009 provided that the Chief Administrative Judge may promulgate rules authorizing an e-filing program in Supreme Court, Surrogate's Court, the Court of Claims and the New York City Civil Court. Although it authorized mandatory e-filing, the legislation continued, however, to restrict severely the administration of such e-filing, providing that mandatory e-filing would be allowed only in certain defined categories of cases in Supreme Court in New York County, Westchester County and one other county outside New York City. In subsequent years, several legislative enactments broadened the categories of permissible mandatory cases and the courts in regard to which such filing would be allowed. The most recent piece of e-filing legislation (chapter 113 of the Laws of 2013) added one county to the list of counties in which mandatory e-filing would be allowed in certain kinds of cases in Supreme Court. In addition, as noted above, legislation provided that the parts of the legislation governing mandatory e-filing would expire on September 1, 2015.

Beyond making mandatory e-filing temporary and restricting where it may be used, existing legislation still sets forth an extraordinary mass of detail as to how e-filing should be administered. The legislation specifies the kinds of civil cases in Supreme Court in which mandatory e-filing may be used. Although this list has expanded over time, even the four categories of legislatively excluded cases comprise types that may be appropriate for mandatory e-filing in some venues, although perhaps subject to limitations that the Chief Administrative

Judge may wish to promulgate. For instance, there are counties that have asked for mandatory e-filing in matrimonial cases, which, if allowed, would of course be done confidentially by rule in accordance with the dictates of the Domestic Relations Law. There may also be reasons why Article 78 proceedings should be subject to mandatory e-filing in certain areas of the state. To accomplish this, however, current legislation requires the Judiciary to return to the Legislature.

Similarly, current legislation permits a rule allowing mandatory e-filing in New York City Civil Court, but only in one narrow category of case. It is not clear why a new statute is needed in order to add to this category at some time in the future when it may make sense to do so.

Current legislation creates three committees to advise the Chief Administrative Judge with regard to implementation of e-filing in Supreme Court, Surrogate's Court, and the New York City Civil Court, respectively. The legislation specifies the identity of representatives who must sit on these advisory committees.³⁹

In addition, as explained earlier in this report, current legislation allows the Chief Administrative Judge to issue rules authorizing consensual e-filing in certain criminal cases in Supreme and County Court and in some Family Court Act cases. Rules may be issued for mandatory e-filing in some types of such cases, but, in each of the two areas, only in up to six counties and only under various conditions.

Current legislation mandates the creation of an advisory committee to consult with the Chief Administrative Judge about the development of e-filing in criminal cases and another such committee to advise about the development of e-filing in certain cases under the Family Court Act. The legislation sets forth in detail listings of persons who are to be members of the two committees. ⁴⁰ There are a total of five separate advisory committees to the Chief Administrative Judge mandated by current law.

At this stage, we believe it no longer makes administrative sense to perpetuate these extremely detailed mandates and restraints upon the sound discretion of the Chief Administrative Judge with respect to mandatory e-filing. It is clearly inefficient to restrict mandatory e-filing in this way, necessitating repeated returns to the Legislature and the Governor with regard to future administrative steps and complicating the daily administration of e-filing, along with the administration of a welter of advisory committees.

What is more, there is no reason to do so. After 16 years of experience, it is clear that such a constrained form of administration by statute is wholly unnecessary, and at this late date can only be considered an excess of caution, unsupported by any evidence, belied by the record. It is time to fully rationalize the administration of e-filing. If we cannot do that after 16 years, when will we able to do so? To the extent that a restriction on the program or a mandate is needed, it will be set out in an appropriate court rule.

3. Mandatory E-Filing Should be Expanded

THIS REPORT SHOWS that the introduction and expansion of mandatory e-filing have been very

³⁹ See Chapter 543 of the Laws of 2011.

⁴⁰ See *id*.; Chapter 184 of the Laws of 2012.

successful, with mandatory e-filing having had a far greater favorable impact since 2009 than consensual e-filing had in the early years of the program. There are a number of reasons for this.

First, the benefits of e-filing are becoming increasingly evident to the Bar, as a result of the growth of e-filing in the courts of our state and in Federal court.

Second, mandatory e-filing simplifies and clarifies the relevant procedures for the Bar and avoids the need for discussions between the parties about whether to participate.

Third, the court system has taken great pains to ensure appropriate consultation with and outreach to the Bar, County Clerks, and organizations and agencies as e-filing has expanded and has made significant modifications to the NYSCEF platform to accommodate the needs of all participants. Many training resources and opportunities have been provided, including a practice version of the NYSCEF platform and training on-line. The system allows attorneys who may wish to do so to use lawyers' service companies to handle their e-filing. Managing attorneys and paralegals in firms can also e-file on behalf of their attorneys.

The NYSCEF Resource Center, which is available from 8 AM to 6 PM every business day by phone and e-mail, has worked with great diligence to respond to questions or concerns attorneys and others may have about the process of e-filing with NYSCEF. Between the explanatory material made available, the "Help" buttons on the NYSCEF platform, the training provided, and the readily-available expertise of the Resource Center, it is very rare for a question or problem to arise for an attorney or other person that is not resolved quickly and easily.

In addition to all of these reasons, mandatory e-filing has proven to be highly productive but devoid of problems because the advance of e-filing has overlapped with vast and extremely rapid changes in technology generally. Every day, digital technology becomes ever more ubiquitous in all areas of our lives, very much including the business world. By now, digital technology is a common feature of the law offices of practitioners all around the state, large and small. E-filing is one more tool of the modern lawyer.

The proposed legislation would broaden the authority of the Chief Administrative Judge to utilize mandatory electronic filing as chapter 416 of the Laws of 2009 did with respect to consensual e-filing, but, as has been the consistent practice in all phases of New York's roll-out of e-filing to date, such authority will only be used when the circumstances for all those affected make it appropriate to do so. The needs of law practice in a specific field or area and operational considerations in the courts and the County Clerk Offices may dictate proceeding in certain areas or courts or types of cases first, and not in others. As a practical matter, prioritization will be a necessity for reasons of efficiency and because the staff available to work on expansion of e-filing is not unlimited. The Chief Administrative Judge will make a determination only after consultation with the Bar, affected organizations and agencies and, where applicable, the affected County Clerk, as to whether and when mandatory e-filing should actually be implemented in a particular court or venue or type of case.

The legislation recommended would increase the potential for utilization of mandatory e-filing and the achievement of the efficiencies and benefits it will bring to the courts, the County Clerks, the Bar and litigants, while conserving resources for the benefit of beleaguered tax-payers. If, however, any concerns remain about implementation of mandatory e-filing, they are addressed by a provision in the proposed legislation that would continue to require the submission to the Legislature, the Governor and the Chief Judge by the Chief Administrative Judge of an annual report on the entire e-filing program.

We should not have to wait another 16 years to reach another major e-filing milestone. We can be confident about increasing the pace of expansion of mandatory e-filing because we have experience that fully justifies such confidence. The experience since 2009 shows that mandatory e-filing works very well. It will continue to work well because the Judiciary will proceed just as it has since 1999, in a reasonable way, taking into account the needs of all concerned, including practitioners, various agencies and groups, the courts and County Clerks, with which the Chief Administrative Judge is intimately familiar. And, if the proposed legislation is approved, we will proceed under administrative rules that provide the necessary flexibility, that, for example, will continue to provide exemptions and exceptions to the unrepresented and attorneys who lack the necessary equipment or knowledge.

4. E-Filing Legislation Should be Simplified, Clarified and Made Part of the Consolidated Laws

THE LEGISLATION THAT HAS GOVERNED E-FILING

since 1999 has been highly complicated. The numerous amendments since 1999 and the placement of this legislation in the Unconsolidated Laws, as well as the very detailed content of these laws, have made it difficult for a diligent attorney to understand what the law does and does not require. In addition to the many important reasons already discussed that argue overwhelmingly in favor of the Judiciary's legislative proposal, this proposal would simplify the e-filing landscape and clarify what is and what is not required. Placement of the relevant e-filing provisions in the CPLR, the Criminal Procedure Law, the Judiciary Law and various Court Acts will make the job of attorneys much easier.

APPENDIX A

PROPOSED LEGISLATION AND MEMORANDUM IN SUPPORT

AN ACT to amend the judiciary law, the civil practice law and rules, the court of claims act, the criminal procedure law, the family court act, the New York city civil court act and the surrogate's court procedure act, in relation to use of electronic means for the commencement and filing of papers in certain actions and proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 212 of the judiciary law is amended by adding a new paragraph (t) to read as follows:

(t) (i) (A) Not later than April first in each calendar year, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report evaluating the state's experience with programs in the use of electronic means for the commencement of actions and proceedings and the service of papers therein as authorized by law and containing such recommendations for further legislation as he or she shall deem appropriate. In the preparation of such report, the chief administrator shall consult with each county clerk in whose county a program has been implemented in civil cases in the supreme court, the advisory committees established pursuant to subparagraphs (ii) through (vi) of this paragraph, the organized bar including but not limited to city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; public defenders; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by any programs that have been implemented or who may be affected by the proposed recommendations for further legislation; representatives of victims' rights organizations; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the

chief administrator, and afford them an opportunity to submit comments with respect to such implementation for inclusion in the report and address any such comments.

(B) The report submitted hereunder in the two thousand seventeen calendar year shall include:

(I) the evaluation specified in subparagraph (v) of this paragraph, including the entities or individuals consulted, the input received, all problems encountered or otherwise brought to the attention of the chief administrator or his or her agents, all solutions devised to address the problems, presentment of all outstanding problems, any recommendations of the advisory committee to the chief administrator, along with recommendations for legislation in relation to the use of electronic means for the commencement of criminal actions and the filing and service of papers in pending criminal actions and proceedings; and

(II) the evaluation specified in subparagraph (iv) of this paragraph, including the entities or individuals consulted, input received, all problems encountered or otherwise brought to the attention of the chief administrator of the courts or his or her agents, all solutions devised to address the problems, presentment of all outstanding problems, any recommendations of the advisory committee to the chief administrator, along with recommendations for legislation in relation to the use of electronic means for the origination of juvenile delinquency proceedings under article three of the family court act and abuse or neglect proceedings pursuant to article ten of the family court act in family court and the filing and service of papers in such pending proceedings.

In the report, the chief administrator also shall address issues that bear upon the need for the courts, district attorneys and others to retain papers filed with courts or served upon parties in criminal proceedings where electronic means can or have been used and make recommendations

for such changes in laws requiring retention of such papers as to the chief administrator may seem appropriate.

- (ii) The chief administrator of the courts shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of civil actions and proceedings and the service and filing of papers therein in the supreme court. This committee shall consist of such number of members as the chief administrator shall designate, among which there shall be representatives of the organized bar including but not limited to city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the supreme court; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator. No fewer than half of the members of this advisory committee shall be upon the recommendation of the New York State Association of County Clerks.
- (iii) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the surrogate's court. This committee shall consist of such number of members as the chief administrator shall designate among which there shall be chief clerks of surrogate's courts; representatives of the organized bar including but not limited to city, state, county and women's bar associations; institutional providers of legal services; not-for-profit legal service providers;

attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the surrogate's court; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator.

(iv) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the civil court of the city of New York. This committee shall consist of such number of members as the chief administrator shall designate, among which there shall be the chief clerk of the civil court of the city of New York; representatives of the organized bar including but not limited to city, state, county and women's bar associations; attorneys who regularly appear in actions specified in subparagraph C of paragraph (two) of subdivision (b) of section twenty-one hundred eleven of the civil practice law and rules; and unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the civil court of the city of New York; and any other persons as deemed appropriate by the chief administrator.

(v) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the

commencement of criminal actions and the filing and service of papers in pending criminal actions and proceedings, as first authorized by paragraph (one) of subdivision (c) of section six of chapter four hundred sixteen of the laws of two thousand nine, as amended by chapter one hundred eighty-four of the laws of two thousand twelve, is continued. The committee shall consist of such number of members as will enable the chief administrator to obtain input from those who are or would be affected by such electronic filing program, and such members shall include county clerks; chief clerks of supreme, county and other courts; district attorneys; notfor-profit legal service providers; public defenders; statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision three of section seven hundred twenty-two of the county law; institutional providers of criminal defense services and other members of the criminal defense bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program and other interested members of the criminal justice community. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who are or would be affected by such electronic filing program, including district attorneys, not-for-profit legal service providers, public defenders, statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision three of section seven hundred twenty-two of the county law; institutional providers of criminal defense services and other members of the criminal defense bar, representatives of victims' rights organizations,

unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program and other interested members of the criminal justice community.

(vi) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the origination of juvenile delinquency proceedings under article three of the family court act and abuse or neglect proceedings pursuant to article ten of the family court act in family court and the filing and service of papers in such pending proceedings, as first authorized by paragraph one of subdivision (d) of section six of chapter four hundred sixteen of the laws of two thousand nine, as amended by chapter one hundred eighty-four of the laws of two thousand twelve, is continued. The committee shall consist of such number of members as will enable the chief administrator to obtain input from those who are or would be affected by such electronic filing program, and such members shall include chief clerks of family courts; representatives of authorized presentment and child protective agencies; other appropriate county and city government officials; institutional providers of legal services for children and/or parents; not-forprofit legal service providers; public defenders; attorneys assigned pursuant to article eighteen-B of the county law; and other members of the family court bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program; and other interested members of the family practice community. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who are or would be affected by such electronic filing program, including representatives of authorized presentment and child protective agencies, other appropriate county and city government officials, institutional providers of legal services for

assigned pursuant to article eighteen-B of the county law and other members of the family court bar, representatives of victims' rights organizations, unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program, and other interested members of the criminal justice community.

§2. The civil practice law and rules is amended by adding a new article 21-A to read as follows:

ARTICLE 21-A —FILING OF PAPERS IN THE COURTS BY FACSIMILE TRANSMISSION AND BY ELECTRONIC MEANS

Section

- 2110. Definitions.
- <u>Filing of papers in the trial courts by facsimile transmission and by electronic means.</u>
- 2112. Filing of papers in the appellate division by electronic means.
- 2110. Definitions. For purposes of this section, "facsimile transmission" and "electronic means" shall be as defined in subdivision (f) of rule 2103 of this chapter.
- §2111. Filing of papers in the trial courts by facsimile transmission and by electronic means.
- (a) Notwithstanding any other provision of law, the chief administrator of the courts, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of facsimile transmission only in the court of claims and electronic means in the supreme court, the civil court of the city of New York, surrogate's courts and the court of claims for: (i) the commencement of civil actions and proceedings, and (ii) the filing and service of papers in pending actions and proceedings. Provided, however, the chief administrator shall

consult with the county clerk of a county outside the city of New York before the use of electronic means is to be authorized in the supreme court of such county, afford him or her the opportunity to submit comments with respect thereto, consider any such comments and obtain the agreement thereto of such county clerk.

- (b) 1. Except as otherwise provided in paragraph two of this subdivision, participation in this program shall be strictly voluntary, and will take place only upon consent of all parties in the action or special proceeding; except that a party's failure to consent to participation shall not bar any other party to the action or proceeding from filing and serving papers by facsimile transmission or electronic means upon the court or any other party to such action or proceeding who has consented to participation. Commencement of an action by electronic means or by facsimile transmission shall not require the consent of any other party.
- 2. In the rules promulgated pursuant to subdivision (a) of this section, the chief administrator may eliminate the requirement of consent to participation in this program in:
- (A) one or more classes of cases in supreme court in such counties as he or she shall specify, and
- (B) one or more classes of cases in surrogate's court in such counties as he or she shall specify, and

(C) actions in the civil court of the city of New York brought by a provider of health care services specified in paragraph one of subsection (a) of section five thousand one hundred two of the insurance law against an insurer for failure to comply with the rules and regulations promulgated by the superintendent of financial services pursuant to subsection (b) of section five thousand one hundred eight of such law.

Notwithstanding the foregoing, the chief administrator shall not eliminate the requirement of consent in any county until after he or she shall have consulted with members of the organized bar and with the county clerk of such county (where the affected court is the supreme court of a county outside the city of New York), have afforded them the opportunity to submit comments with respect thereto, have considered any such comments and, in the instance of any county outside the city of New York, have obtained the agreement thereto of the county clerk thereof.

- 3. Where the chief administrator eliminates the requirement of consent as provided in paragraph two of this subdivision, he or she shall afford counsel and unrepresented parties the opportunity to opt out of the program, via presentation of a prescribed form to be filed with the clerk of the court where the action is pending. Said form shall permit an attorney or unrepresented party to opt-out of participation in the program under any of the following circumstances, in which event, he or she will not be compelled to participate:
- (A) where the attorney certifies in good faith that he or she lacks the computer hardware and/or connection to the internet and/or scanner or other device by which documents may be converted to an electronic format; or
- (B) where the attorney certifies in good faith that he or she lacks the requisite knowledge in the operation of such computers and/or scanners necessary to participate. For the purposes of this subparagraph, the knowledge of any employee of an attorney, or any employee of the attorney's law firm, office or business who is subject to such attorney's direction, shall be imputed to the attorney; or
- (C) where a party is not represented by counsel, he or she chooses not to participate in the program.

Notwithstanding the foregoing, a court may exempt any attorney from being required to participate in the program upon application for such exemption showing good cause therefor.

- (c) For purposes of this section, "the filing and service of papers in pending actions and proceedings" shall include the filing and service of a notice of appeal pursuant to section 5515 of this chapter.
- §2112. Filing of papers in the appellate division by electronic means. Notwithstanding any other provision of law, and except as otherwise provided in subdivision (c) of section 2111 of this article, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for: (i) appeals to such court from the judgment or order of a court of original instance or from that of another appellate court, (ii) making a motion for permission to appeal to such court, (iii) commencement of any other proceeding that may be brought in such court, and (iv) the filing and service of papers in pending actions and proceedings. Provided, however, before promulgating any such rules, the appellate division shall consult with the chief administrator of the courts. To the extent practicable, rules promulgated pursuant to this section shall be uniform.
 - §3. The court of claims act is amended by adding a new section 11-b to read as follows: §11-b. Use of facsimile transmission and electronic filing authorized.
- 1. Notwithstanding any other provision of law, the chief administrator of the courts, with the approval of the administrative board of the courts, may authorize a program in the use of facsimile transmission and electronic means in the court as provided in article twenty-one-A of the civil practice law and rules.
- 2. For purposes of this section, "facsimile transmission" and "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

- §4. Section 10.40 of the criminal procedure law, as added by chapter 47 of the laws of 1984, is amended to read as follows:
 - §10.40. Chief administrator to prescribe forms and to authorize use of electronic filing.
- 1. The chief administrator of the courts shall have the power to adopt, amend and rescind forms for the efficient and just administration of this chapter. A failure by any party to submit papers in compliance with forms authorized by this section shall not be grounds for that reason alone for denial or granting of any motion.
- 2. (a) Notwithstanding any other provision of law, the chief administrator of the courts, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of electronic means in the supreme court and in the county court for (i) the filing with a court of an accusatory instrument for the purpose of acquiring jurisdiction in a superior court, as provided by articles one hundred ninety-five and two hundred of this chapter, and (ii) the filing and service of papers in pending criminal actions and proceedings. Provided, however, the chief administrator shall consult with the county clerk of a county outside the city of New York before the use of electronic means is to be authorized in the supreme court or county court of such county, afford him or her the opportunity to submit comments with respect thereto, consider any such comments and obtain the agreement thereto of such county clerk.
- (b) (i) Except as otherwise provided in this paragraph, participation in this program shall be strictly voluntary and will take place only upon consent of all parties in the criminal action or proceeding; except that a party's failure to consent to participation shall not bar any other party to the action from filing and serving papers by electronic means upon the court or any other party to such action or proceeding who has consented to participation. Filing an accusatory instrument

by electronic means with the court for the purpose of conferring jurisdiction over a criminal action upon such court shall not require the consent of any other party; provided, however, that upon such filing any person who is the subject of such accusatory instrument and any attorney for such person shall be permitted to immediately review and obtain copies of such instrument if such person or attorney would have been authorized by law to review or copy such instrument if it had been filed with the court in paper form.

(ii) The chief administrator may eliminate the requirement of consent to participation in this program in supreme and county courts of not more than six counties provided he or she may not eliminate such requirement for a court without the consent of the district attorney, the consent of the criminal defense bar as defined in subdivision three of this section and the consent of the county clerk of the county in which such court presides.

Notwithstanding the foregoing, the chief administrator shall not eliminate the requirement of consent to participation in a county hereunder until he or she shall have provided all persons or organizations, or their representative or representatives, who regularly appear in criminal actions or proceedings in the superior court of such county with reasonable notice and an opportunity to submit comments with respect thereto and shall have given due consideration to all such comments, nor until he or she shall have consulted with the members of the advisory committee specified in subparagraph (v) of paragraph (t) of subdivision two of section two hundred twelve of the judiciary law.

(c) Where the chief administrator eliminates the requirement of consent as provided in subparagraph (ii) of paragraph (b) of this subdivision, he or she shall afford counsel the opportunity to opt out of the program, via presentation of a prescribed form to be filed with the court where the criminal action is pending. Said form shall permit an attorney to opt out of

participation in the program under any of the following circumstances, in which event, he or she will not be compelled to participate:

- (i) Where the attorney certifies in good faith that he or she lacks appropriate computer hardware and/or connection to the internet and/or scanner or other device by which documents may be converted to an electronic format; or
- (ii) Where the attorney certifies in good faith that he or she lacks the requisite knowledge in the operation of such computers and/or scanners necessary to participate. For the purposes of this subparagraph, the knowledge of any employee of an attorney, or any employee of the attorney's law firm, office or business who is subject to such attorney's direction, shall be imputed to the attorney.

Notwithstanding the foregoing: (A) where a party is not represented by counsel, he or she may not participate in the program except upon his or her request and permission of the court; (B) a party not represented by counsel who has opted in shall be afforded the opportunity to opt out of the program for any reason via presentation of a prescribed form to be filed with the clerk of the court where the proceeding is pending; and (C) a court may exempt any attorney from being required to participate in the program upon application for such exemption, showing good cause therefor.

- (d)(i) Nothing in this section shall affect or change any existing laws governing the sealing and confidentiality of court records in criminal proceedings or access to court records by the parties to such proceedings, nor shall this section be construed to compel a party to file a sealed document by electronic means.
- (ii) Notwithstanding any other provision of this section, no paper or document that is filed by electronic means in a criminal proceeding in supreme court or county court shall be

available for public inspection on-line. Subject to the provisions of existing laws governing the sealing and confidentiality of court records, nothing herein shall prevent the unified court system from sharing statistical information that does not include any papers or documents filed with the action; and, provided further, that this paragraph shall not prohibit the chief administrator, in the exercise of his or her discretion, from posting papers or documents that have not been sealed pursuant to law on a public website maintained by the unified court system where: (A) the website is not the website established by the rules promulgated pursuant to paragraph (a) of this subdivision, and (B) to do so would be in the public interest. For purposes of this subparagraph, the chief administrator, in determining whether posting papers or documents on a public website is in the public interest, shall, at a minimum, take into account for each posting the following factors: (A) the type of case involved; (B) whether such posting would cause harm to any person, including especially a minor or crime victim; (C) whether such posting would include lewd or scandalous matters; and (D) the possibility that such papers or documents may ultimately be sealed.

- (iii) Nothing in this section shall affect or change existing laws governing service of process, nor shall this section be construed to abrogate existing personal service requirements as set forth in the criminal procedure law.
 - 3. For purposes of this section, the following terms shall have the following meanings:
- (a) "Consent of the criminal defense bar" shall mean that consent has been obtained from all provider offices and/or organizations in the county that represented twenty-five percent or more of the persons represented by public defense providers pursuant to section seven hundred twenty-two of the county law, as shown in the most recent annual reports filed pursuant to subdivision one of section seven hundred twenty-two-f of the county law. Such consent, when

given, must be expressed in a written document that is provided by a person who is authorized to consent on behalf of the relevant public defender organization, agency or office; and

- (b) "Electronic means" shall be as defined in subdivision (f) of rule 2103 of the civil practice law and rules; and
- (c) The "filing and service of papers in pending criminal actions and proceedings" shall include the filing and service of a notice of appeal pursuant to section 460.10 of the criminal procedure law.
- §5. The criminal procedure law is amended by adding a new section 460.90 to read as follows:

§460.90. Filing of papers on appeal to the appellate division by electronic means.

Notwithstanding any other provision of law, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for the taking and perfection of appeals in accordance with the provisions of section two thousand one hundred twelve of the civil practice law and rules. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule two thousand one hundred three of such chapter.

- §6. Section 214 of the family court act, as amended by chapter 751 of the laws of 1989, is amended to read as follows:
 - §214. [State] Chief administrator to prescribe forms; electronic filing in family court.
- (a) The [state] <u>chief</u> administrator <u>of the courts</u> shall promulgate a uniform, statewide petition for adoption and may prescribe such other forms as may be proper for the efficient and just administration of this act, including forms for petitions, summons, warrants, subpoenas, undertakings, and orders authorized by this act.

- (b) (i) Notwithstanding any other provision of law, the chief administrator, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of electronic means in the family court for: (1) the origination of proceedings in such court, and (2) the filing and service of papers in pending proceedings.
- (ii) (1) Except as otherwise provided in this paragraph, participation in this program shall be strictly voluntary and will take place only upon consent of all parties in the proceeding; except that failure of a party or other person who is entitled to notice of the proceedings to consent to participation shall not bar any other party from filing and serving papers by electronic means upon the court or any other party or person entitled to receive notice of such proceeding who has consented to participation. Filing a petition with the court by electronic means for the purpose of originating a proceeding shall not require the consent of any other party; provided, however, that upon such filing, a party to such proceeding and any attorney for such person shall be permitted to immediately review and obtain copies of such documents and papers if such person or attorney would have been authorized by law to review or obtain copies of such documents and papers if they had been filed with the court in paper form.
- (2) In the rules promulgated pursuant to paragraph (i) of this subdivision, the chief administrator may eliminate the requirement of consent to participation in this program in family courts of not more than six counties for:
- (A) the filing with the court of a petition originating a juvenile delinquency proceeding under article three of this act by a presentment agency as defined in section 301.2 of such act;

(B) the filing with the court of a petition originating in a proceeding to determine abuse or neglect pursuant to article ten of this act by a child protective agency, as defined in section one thousand twelve of such act; and

(C) the filing and service of papers in proceedings specified in clauses (A) and (B) of this subparagraph where, pursuant to such clauses, such proceedings were originated in the court by electronic filing.

Notwithstanding the foregoing, the chief administrator shall not eliminate the requirement of consent to participation without the consent of each authorized presentment agency, child protective agency of an affected county, the family court bar providing representation to parents, and the family court bar providing representation to children (as represented by the head of each legal services organization representing parents and/or children, the head of each public defender organization, and president of the local bar association as applicable) in any county in which such elimination shall apply.

Notwithstanding the foregoing, the chief administrator may not eliminate the requirement of consent to participation in a county hereunder until he or she shall have provided all persons or organizations, or their representative or representatives, who regularly appear in proceedings in the family court of such county, in which proceedings the requirement of consent is to be eliminated, with reasonable notice and an opportunity to submit comments with respect thereto and shall have given due consideration to all such comments, nor until he or she shall have consulted with the members of the advisory committee continued pursuant to subparagraph (vi) of paragraph (t) of subdivision two of section two hundred twelve of the judiciary law.

(c) Where the chief administrator eliminates the requirement of consent as provided in subparagraph two of paragraph (ii) of subdivision (b) of this section, he or she shall afford

counsel the opportunity to opt out of the program, via presentation of a prescribed form to be filed with the clerk of the court where the proceeding is pending. Said form shall permit an attorney to opt out of participation in the program under any of the following circumstances, in which event, he or she will not be compelled to participate:

- (i) Where the attorney certifies in good faith that he or she lacks the computer hardware and/or connection to the internet and/or scanner or other device by which documents may be converted to an electronic format; or
- (ii) Where the attorney certifies in good faith that he or she lacks the requisite knowledge in the operation of such computers and/or scanners necessary to participate. For the purposes of this paragraph, the knowledge of any employee of an attorney, or any employee of the attorney's law firm, office or business who is subject to such attorney's direction, shall be imputed to the attorney.

Notwithstanding the foregoing: (A) where a party or a person entitled to notice of the proceedings is not represented by counsel, he or she may not participate in the program except upon his or her request and permission of the court; (B) a party who is not represented by counsel that has opted in shall be afforded the opportunity to opt out of the program for any reason via presentation of a prescribed form to be filed with the clerk of the court where the proceeding is pending; and (C) a court may exempt any attorney from being required to participate in the program upon application for such exemption, showing good cause therefor.

- (d) For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.
- (e) Notwithstanding any provision of this chapter, no paper or document that is filed by electronic means in a proceeding in family court shall be available for public inspection on-line.

Subject to the provisions of existing laws governing the sealing and confidentiality of court records, nothing herein shall prevent the unified court system from sharing statistical information that does not include any papers or documents filed with the action.

- (f) Nothing in this section shall affect or change any existing laws governing the sealing and confidentiality of court records in family court proceedings or access to court records by the parties to such proceedings, nor shall this section be construed to compel a party to file a sealed document by electronic means.
- (g) Nothing in this section shall affect or change existing laws governing service of process, nor shall this section be construed to abrogate existing personal service requirements as set forth in this act and the civil practice law and rules.
 - §7. The family court act is amended by adding a new section 1122 to read as follows:
- §1122. Filing of papers on appeal to the appellate division by electronic means.

 Notwithstanding any other provision of law, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for the taking and perfection of appeals in accordance with the provisions of section twenty-one hundred twelve of the civil practice law and rules. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of such law and rules.
- §8. The New York city civil court act is amended by adding a new section 2103-a to read as follows:
 - §2103-a. Use of electronic filing authorized.
- 1. Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of electronic means in the civil court of the city of New York as provided in article twenty-one-A of the civil practice law and rules.

- 2. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.
- §9. The surrogate's court procedure act is amended by adding a new section 107 to read as follows:
 - §107. Use of electronic filing authorized.
- 1. Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of electronic means in the surrogate's court as provided in article 21-A of the civil practice law and rules.
- 2. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.
- §10. (a) Where rules authorizing a program in the use of electronic means for any purpose and in any court were promulgated by the chief administrator of the courts pursuant to law on or before August 31, 2015, and such rules were in effect on such date, such rules shall remain in effect unless modified or abrogated by the chief administrator pursuant to law as provided in this act.
- (b) Notwithstanding the provisions of any other law, no party or his or her counsel shall be charged a fee for viewing information filed by electronic means, or for downloading or printing such information through the use of such party or counsel's own equipment. The chief administrator of the courts shall ensure that sufficient computer terminals and staff are available at the courthouse of each court participating in the program in the use of electronic means, to enable parties and their counsel to access information, subject to the provisions of article 21-A of the civil practice law and rules, section 10.40 of the criminal procedure law and subdivision (b)

of section 214 of the family court act, and laws governing the sealing and confidentiality of court records, filed by electronic means at such courthouse in a prompt and convenient manner.

§11. This act shall take effect immediately.

A. GAIL PRUDENTI
CHIEF ADMINISTRATIVE JUDGE

MARC C. BLOUSTEIN LEGISLATIVE COUNSEL

OCA 2015-1

IN SUPPORT OF

S.

A.

An act to amend the judiciary law, the civil practice law and rules, the court of claims act, the criminal procedure law, the family court act, the New York city civil court act and the surrogate's court procedure act, in relation to use of electronic means for the commencement and filing of papers in certain actions and proceedings

This measure is being introduced at the request of the Chief Judge of the State and the Chief Administrative Judge.

As far back as 1999, the State began to introduce pilot programs in the use of electronic means for the purpose of commencing certain categories of cases and filing court papers with judges and with adverse parties ("e-filing"). See L. 1999, c. 367. In the years since, those programs have been continued and progressively expanded – to apply to a broader spectrum of cases in additional courts. As has been well-documented in numerous analyses and reports prepared over the years to assess the effectiveness of e-filing in New York's State courts, the pilot programs have been very successful and greeted with great enthusiasm by both bench and bar.

Authorization for use of several vital components of the State's e-filing programs – mandatory e-filing under certain circumstances in civil cases and both consensual and mandatory e-filing in criminal courts and in Family Court – is due to expire on September 1, 2015. This measure would eliminate this sunset and make several other important changes in the e-filing programs. Specifically, this measure would:

• Make permanent present authorization for the use of mandatory e-filing in Supreme Court civil parts. By all measures, e-filing in this State has been an enormous success. To date, there have been more than 820,000 cases e-filed in New York's courts. By year's end, we project that this number will grow to exceed one million cases. More than 58,000 attorneys and others have become

registered users of the State's electronic filing system (NYSCEF). None of this can come as a surprise. E-filing:

- benefits all sectors of the bar, particularly solo and small-firm practitioners who lack the resources of large law firms and attorneys in rural counties who must travel long distances to reach a courthouse.
- saves the bar the time and expense of serving other parties (*i.e.*, the e-filing system serves other parties automatically and instantaneously, providing immediate access to the filed documents).
- reduces costs and enhances efficiency for the bench, County Clerks and local governments.
- is green, reducing the number of trips attorneys must make to the courthouse to file papers and the amount of paper required in litigation.
- has proven immensely successful in Federal courts and in other state courts.

To best capitalize upon these benefits, we believe it appropriate and necessary – after more than fifteen years of success with e-filing in New York – to put greater reliance upon mandatory e-filing. It has been our experience that, whether because of habit or simple inertia, consensual e-filing programs have trouble drawing participation. It is for this reason that, six years ago, the Legislature began to authorize mandatory e-filing programs. At this point, these programs, which are operative in many of the State's largest jurisdictions, are working well and ripe for expansion.

· Vest the Chief Administrative Judge with authority to implement mandatory e-filing in any county and in any class of cases provided the local County Clerk agrees. Present law recites the 16 specific counties in which mandatory e-filing may be authorized. As we have discovered, however, this arrangement is actually counter-productive to effective roll-out of e-filing, as counties do not become ready for e-filing in easily-predictable fashion. Some of the 16 statutory counties will not be ready for e-filing for years; other counties, not now in the statute, can be ready soon - but must wait to be added by the Legislature. This has hobbled, in some measure, the State's efforts to gain experience with e-filing. Giving the Chief Administrative Judge the authority to delineate where mandatory e-filing can go forward should counter this by adding essential flexibility to the process. Moreover, to concerns that such a change would confer too much authority on the Chief Administrative Judge, it can be said that: (1) the 16 counties in which mandatory e-filing may now be authorized include most of the State's largest, most populous venues so that such additional counties as the Chief Administrative Judge might add have smaller populations and are not likely to host a great volume of litigation; (2) no expansion of mandatory e-filing may be undertaken without the approval of affected local County Clerks; and (3) self-represented litigants and members of the bar will continue to enjoy their present ability to opt out of mandatory e-filing.

- Make permanent present authorization for the use of e-filing, both consensual and mandatory, in criminal superior courts and Family Court. While we have as yet to exploit this authorization, it is only because of a want of resources. Sooner or later, we will be able to do this and, given the tremendous success e-filing has enjoyed in civil cases, there is little reason to doubt that it will be similarly successful in criminal court and in Family Court.
- Continue permanently, without change, programs of consensual and mandatory e-filing in Surrogate's Court and the New York City Civil Court; and programs for consensual e-filing (and filing by FAX) in the Court of Claims. Bench and bar continue to register their support for the breadth and pace of e-filing's roll-out in these courts.
- Authorize use of e-filing in the Appellate Divisions at the discretion of each Judicial Department subject only to an aspirational invitation to make any implementing rules uniform. All four Departments are anxious to see e-filing used in the cases before them, and they strongly support this initiative.
- Relocate statutes governing e-filing from the State's Unconsolidated Laws to appropriate provisions of the Consolidated Laws. Unconsolidated statutes, where e-filing authority now reposes, can be very difficult to find. It is far more sensible to place that authority in more accessible and more familiar Consolidated Laws like the Judiciary Law, CPLR, CPL, etc.

This measure, which would have no meaningful fiscal impact, would take effect immediately.

Tributes to E-filing in New York's Courts

"It is time to end the 'experiment,' fully embrace modern technology, and by statute make e-filing a permanent part of New York practice."

--- Hon. Jonathan Lippman
Chief Judge of the State of New York

"E-filing should be mandatory in all proceedings in all courts. Its use makes service and filing of papers far easier and less expensive for practicing lawyers as well as for the court system . . . Adoption of e-filing is an effective use of a now well-established technological tool that benefits everyone."

--- New York State Bar Association

"[T]he overwhelming response by NYSTLA members . . . has been positive. E-filing has facilitated the efficient representation of clients, and brought the practice of law into the twenty-first century . . . NYSTLA is strongly in favor of further expanding the e-filing program."

--- New York State Trial Lawyers Association

"The decision to go to mandatory e-filing was one of the best decisions ever made for this Clerk's office. I look forward to adding more case types to our mandatory e-filing requirement in the future and see more counties make the move to court filing thru NYSCEF."

--- Hon. Malcolm Merrill

Deputy County Clerk, Onondaga County

"The implementation of electronic filing in Westchester County has been a tremendous success . . . [E]lectronic filing has transformed the way we do business . . . [T] he customer eliminates the time and costs associated with getting paper filings to our office, as well as the risk that these paper filings could be misrouted along the way. There is no doubt this is both efficient and cost-effective for our customers . . . We believe strongly the NYSCEF has a bright future and we want nothing more than to be the county where e-filing is comprehensive and embraced by our customers and partners in the courts."

--- Hon. Timothy C. Idoni Westchester County Clerk

"The benefits of [e-filing] have been significant . . . Electronic filing has certainly been a positive change to our operations . . . [E]-filing has been successfully integrated, well-accepted and beneficial to all involved."

--- Hon. Paul Piperato
Rockland County Clerk

"Overall, I am pleased that we were one of the first counties to participate voluntarily in e-filing and one of the first mandatory counties and I believe that the users in the Erie County Clerk's Office feel very positive about the system . . ."

--- Hon. Christopher L. Jacobs Erie County Clerk

"The feedback we received overwhelmingly supports expansion of NYSCEF, not only to more counties statewide, but also to the Appellate Divisions, and the Court of Appeals. In addition to supporting expansion of the e-filing system, the comments indicate support for a uniform filing system, with the various Courts being limited in the amount of customization so the system is consistent state wide."

--- Managing Attorneys and Clerks Association

"Overall, the move towards electronic filing has been positive and we look forward to expanding the breadth of cases which must be filed in this manner."

--- Hon. Judith A. Pascale Suffolk County Clerk "[T]here has been extremely positive feedback, which is indicative of the unquestionable support this initiative has enjoyed . . . Nassau County looks to add additional case types in the near future . . ."

--- Hon. Maureen O'Connell Nassau County Clerk

"The NYSCEF system . . . promotes transparency, accountability and confidence in the court system as litigants, attorneys, parties, judges, court staff and the public, have equal simultaneous and contemporaneous access to all filed documents, unless of course, a court order or law restricts access to a court file or a particular document."

--- Hon. Nancy T. Sunshine Kings County Clerk

"Under current law, a County may implement e-filing on a voluntary basis with the consent of the Clerk and the courts. Mandatory e-filing, however, requires an act of the state legislature. While this requirement was understandable when e-filing was a pilot program, NYSCEF has matured to the point that expansion to a mandatory program should be at the discretion of the courts and the clerk jointly."

"While there are significant monetary savings [to the office of the county clerk] . . ., perhaps the greatest benefits accrue to the public and the litigants."

--- Hon. Bradford H. Kendall Dutchess County Clerk

"The Niagara County Clerk's office has served as a partner with the New York State Office of Court Administration since the passage of the original e-filing enabling legislation. We are very pleased to have been on the forefront of this major project, and look forward to moving toward a mandatory program in the future."

--- Hon. Wayne F. Jagow Niagara County Clerk

"There is a constant collaboration of efforts between our county and the e-filing resource center to continuously enhance the system. NYSCEF staff is always willing to address any concerns and provide improvements to the system. We look forward to continue working with NYSCEF to expand mandatory electronic filings in all cases types in Queens County."

--- Hon. Audrey I. Pfeffer Queens County Clerk

"E-filing has saved my office a tremendous amount of time and we continue to strongly encourage our local attorneys to take the logical step to e-filing."

--- Hon. Elizabeth Larkin Cortland County Clerk "Electronic filing creates costs savings as attorneys can access these files remotely, the cost savings accorded to law firms is immeasurable. They no longer have to send someone to the office for routine matters such as, checking on an order or printing out a simple copy."

--- Hon. Stephen J. Fiala Richmond County Clerk

History of E-Filing in New York

The following will summarize the evolution of e-filing in New York.

L. 1999, c. 367

The State's introduction to e-filing. This measure authorized use of consensual e-filing in Supreme Court in one county in New York City and in one county outside the City, to be selected by the Chief Administrative Judge with the approval of the Administrative Board of the Courts. Under chapter 367, e-filing would be available for the filing of papers in commercial and tax *certiorari* cases in Supreme Court to commence a case and, as well, for the exchange of legal papers between counsel for the parties in such cases where all have consented to such exchange. Chapter 367 was scheduled to sunset on July 1, 2002, approximately three years after its enactment. In the wake of its enactment, consensual e-filing was authorized for commercial cases in the Commercial Divisions of Supreme Court in Monroe and New York Counties; and for tax *certiorari* cases in Supreme Court in Westchester County.

L. 2002, c. 110

This measure continued the e-filing programs established by chapter 367 for another year -i.e., until July 1, 2003. Also, to enable greater experience with e-filing under the programs, the measure expanded the number of venues in which consensual e-filing could be authorized to include commercial claims in the Commercial Divisions of Supreme Court in Albany, Monroe, Nassau, New York, Suffolk and Westchester Counties; and tax *certiorari* cases in Supreme Court in Monroe, New York, Suffolk and Westchester Counties. Finally, the measure authorized - for the first time - use of consensual e-filing in the Court of Claims.

L. 2003, c. 261

This measure continued the e-filing programs established by chapter 367 and modified by chapter 110 for another 26 months – until September 1, 2005.

L. 2004, c. 384

Responding to community requests, this measure expanded the number of venues and classes of cases in which consensual e-filing could be authorized to include commercial claims and tort cases in Supreme Court in Albany, Bronx, Kings, Monroe, Nassau, New York, Queens, Richmond, Suffolk and Westchester Counties; commercial claims in Supreme Court in Erie

County; tax *certiorari* cases in Supreme Court in Bronx, Kings, Monroe, New York, Queens, Richmond, Suffolk and Westchester Counties; and cases in Surrogate's Court in Erie County.

L. 2005, c. 504

This measure continued the e-filing programs established by chapter 367 and subsequently modified for another four years – until September 1, 2009. Again recognizing growing community enthusiasm for e-filing in the courts, this measure further expanded the number of venues and classes of cases in which consensual e-filing could be authorized to include commercial claims, tax *certiorari* and tort cases in Supreme Court in Albany, Broome, Bronx, Erie, Essex, Kings, Monroe, Nassau, New York, Niagara, Onondaga, Queens, Richmond, Suffolk, Sullivan and Westchester Counties; and all classes of cases in Supreme Court in Broome County. At the same time, it continued authority for e-filing in cases in Surrogate's Court in Erie County.

L. 2007, c. 369

This measure further expanded the number of venues in which consensual e-filing could be authorized in commercial claims, tax *certiorari* and tort cases in Supreme Court to include Livingston County, along with Albany, Broome, Bronx, Erie, Essex, Kings, Monroe, Nassau, New York, Niagara, Onondaga, Queens, Richmond, Suffolk, Sullivan and Westchester Counties (and all classes of cases in Supreme Court in Broome County). At the same time, it continued authority for e-filing in cases in Surrogate's Court in Erie County and added comparable authority for e-filing in cases in Surrogate's Court in Chautauqua, Monroe, Queens and Suffolk Counties. Finally, it added authority for consensual e-filing in the New York City Civil Court in claims brought by a provider of health services specified in section 502(a)(1) of the Insurance Law against an insurer for failure to comply with Insurance Department rules promulgated pursuant to section 5108(b) of the Insurance Law.

L. 2008, c. 95

This measure authorized the Chief Administrative Judge to permit consensual e-filing in all classes of cases in Supreme Court in Erie County, along with Broome County.

L. 2009, c. 416

Marking the tenth anniversary of New York's experience with consensual e-filing programs, this measure made the authority to permit such programs permanent; and expanded that authority so that it could be used to permit e-filing in in any class of cases in Supreme Court in any county, in Surrogate's Court in any county, in the Court of Claims statewide and in the New York City Civil Court. The measure also, for the first time, enabled the establishment of mandatory e-filing programs, albeit limited to certain categories of commercial claims in New York County, tort cases in Westchester County and one or more classes of cases (excluding matrimonials, Article 78 proceedings, proceedings under the Mental Hygiene Law and Election Law proceedings) in one other county outside New York selected by the Chief Administrative

Judge. This authority for mandatory e-filing was made subject to a three-year sunset (September 1, 2012).

L. 2010, c. 528

This measure built upon the changes instituted by chapter 416 of the Laws of the preceding year, especially as they applied to the newly-authorized deployment of mandatory effling in civil parts of Supreme Court. Specifically, the measure authorized the Chief Administrative Judge to permit mandatory e-filing in the same categories of commercial claims in Westchester County as it had authorized for such claims in New York County; and replaced authority for the Chief Administrative Judge to permit unrestricted (but for the exceptions created under chapter 416) mandatory e-filing in a single county outside New York with authority to permit such e-filing in the following four counties: Livingston, Monroe, Rockland and Tompkins. The measure also added the requirement that each local county clerk okay institution of mandatory e-filing in his or her county before it can go forth. Finally, the measure imposed a continuing and more detailed annual reporting requirement for the Chief Administrative Judge relating to the operation of e-filing programs.

L. 2011, c. 543

This measure expanded the breadth of mandatory e-filing programs in civil parts of Supreme Court. Specifically, it authorized their establishment in Supreme Courts in New York City in commercial claims without regard to the amount in controversy; and in a broader array of counties that had been authorized by chapter 528 of the Laws of 2010 (adding Allegany, Essex and Onondaga, and permitting mandatory e-filing in all classes of cases (excluding matrimonials, Article 78 proceedings, proceedings under the Mental Hygiene Law and Election Law proceedings) in Westchester). The measure also permitted the Chief Administrative Judge to authorize mandatory e-filing in Surrogate's Court in any county, and in the New York City Civil Court in claims brought by a provider of health services specified in section 502(a)(1) of the Insurance Law against an insurer for failure to comply with Insurance Department rules promulgated pursuant to section 5108(b) of the Insurance Law. Finally, the measure created additional advisory committees to assist the Chief Administrative Judge in her responsibility to provide the Legislature with continuing evaluations of the State's e-filing programs and to help plan for institution of e-filing in criminal courts and Family Court.

L. 2012, c. 184

This measure further expanded the breadth of mandatory e-filing programs in civil parts of Supreme Court. Specifically, it again added to the array of counties that had been authorized by chapter 528 of the Laws of 2010 (and modified by chapter 543 of the Laws of 2011), this time including Erie and Suffolk Counties. At the same time, it authorized the Chief Administrative Judge to extend mandatory e-filing to any class of cases (with the same exclusions applicable to mandatory e-filing in upstate counties) in Supreme Court in the counties of New York City. Lastly, the measure authorized the Chief Administrative Judge to institute consensual (and, under limited circumstances, mandatory) e-filing in criminal superior courts and in Family Court.

L. 2013, c. 113

This measure once again expanded the breadth of mandatory e-filing programs in civil parts of Supreme Court, adding Nassau County to the array of counties that had been authorized by chapter 528 of the Laws of 2010 (and modified by chapter 543 of the Laws of 2011 and chapter 184 of the Laws of 2012).

APPENDIX B

COMMENTS OF COUNTY CLERKS, BAR ASSOCIATIONS AND OTHERS

GLENN LAU-KEE

President, New York State Bar Association

Kee & Lau-Kee, PLLC 354 Broome Street, Suite 1 New York, NY 10013 212/625-0300 FAX 212/6251812 glaukee@keelaukee.com

February 23, 2015

Mr. Jeffrey Carucci Statewide Coordinator of Electronic Filing NYS Unified Court System New York County Courthouse 60 Centre Street, Room 119M New York, NY 10007

Dear Mr. Carcucci:

The New York State Bar Association offers the following in response to your request for comments on the court system's e-filing program.

First, and fundamentally, the Association fully supports the efforts of the Chief Administrative Judge to expand e-filing throughout the state. The Association's basic policy is that e-filing should be mandatory in all proceedings in all courts. Its use makes service and filing of papers far easier and less expensive for practicing lawyers as well as for the court system. Adoption of e-filing is an effective use of a now well established technological tool that benefits everyone.

To the extent that opt outs remain necessary, at least for a period of time, the Chief Administrative Judge has recognized this need for some flexibility. In addition, she has recognized the need for additional privacy protections of electronic documents, which are more easily available to the public, and she has taken steps to protect private information. The redaction rule, which becomes a mandate on March 1, is an important part of providing for this protection.

We have closely followed the efforts of the Chief Administrative Judge to expand voluntary e-filing as widely as possible. She has managed to overcome technological problems and political resistance, and is to be applauded for all she has done. However, it is now time to end the voluntary nature of the e-filing program, and begin an effort to make it mandatory. We are aware that OCA will shortly be submitting a bill to empower the Chief Administrative Judge to exercise her discretion to mandate e-filing where she believes it can be successfully accomplished. This would be a major step forward. The State Bar Association will stand in full support of this bill after it is introduced.

In short, we continue to look forward to working with the Chief Administrative Judge and the entire court system in promoting and expanding a program that results in significant benefit to all of the users of our courts.

Sincerely,

Glenn Lau-Kee, Esq.



February 23, 2015

Jeffrey Carucci Statewide Coordinator for Electronic Filing NYS Unified Court System New York County Courthouse 60 Centre Street, Room 119M New York, NY 10007

RE: New York State Courts

Electronic Filing Program

Dear Mr. Carucci:

Thank you for the opportunity to comment upon the implementation of the electronic filing program for the commencement of actions and proceedings and the service and filing of papers therein.

The New York State Trial Lawyers Association represents over 3500 attorney members who practice in courts throughout the state. We are pleased to report that the overwhelming response by NYSTLA members to the implementation of the e-filing program has been positive. E-filing has facilitated the efficient representation of clients, and brought the practice of law into the twenty-first century. Where a rare problem has arisen, the issue has been promptly resolved by the Court System's staff.

In light of the above, NYSTLA is strongly in favor of further expanding the e-filing program.

Sincerely,

Michael S. Levine, President

New York State Trial Lawyers Association

COUNTY CLERK'S OFFICE – CORTLAND COUNTY

ELIZABETH LARKIN County Clerk

TAMMY L BARRIGER Deputy County Clerk

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elarkin@cortland-co.org



Jeffrey Carucci Statewide Coordinator for E-Filing Office of Court Administration 60 Centre Street NY NY 10007

Dear Mr Carucci,

Thank you for asking for our comments, suggestions and observations regarding the implementation of e-filing in Cortland County. E-Filing has basically been a successful adventure in Cortland County and we continually strive to work out any issues that arise. The staff at the resource center has worked with us to resolve issues and implement procedures that may be specific to our county.

We accepted our first e-filing on January 23rd, 2014. As the year went on and as attorneys realized they could e-file in Cortland County, the number of e-filed cases steadily increased. To date we have received 112 E-Filings. This represents about 17% of the number of civil case that were commenced. Although, Cortland County accepts e-filing in all cases, we were only recently approved to accept matrimonial filings and filings under Mental Hygiene, Election Law and Article 78 are still not allowed.

We accept e-filings through our vendor, Info Quick Solutions (IQS). As stated above, we continually work with the e-filing resource center to resolve issues at the time they occur. Although, we did have an issue where filings were received directly into our civil cases without any notification given to the county clerk's office, this issue seems to be resolved. Personnel at the NYSCEF Resource Center are very professional and prompt in resolving any issues we present.

I have asked the Deputy County Clerk, Tammy Barriger, the Chief Clerk, Karen Jordon and the Supreme Court Secretary, Sheryl Holbrook to comment on their experiences with e-filing.

COUNTY CLERK'S OFFICE - CORTLAND COUNTY

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E-filing has been a positive experience and the more exposure I have to it, the better I like it. As our experience with the system has grown, so have the enhancements to the system. In particular, the scanning app has streamlined the uploading of documents. I believe that it is very important for all courts coming up on this system to have a person designated to receive all the emails This is the best way to catch routing errors. I offer this example; an attorney filed his petition and notice of petition in one document as a petition. The Notice of Petition was the trigger to come to the court's to do list. I therefore, would not have been able to process the petition. I had to contact the attorney to have him upload the notice separately for me to be able to process the filing. The resource center is very open to suggestions to improve the system and has been responsive to any of my concerns. I look forward to growing with this technology.

Karen R. Jordan Chief Clerk

My experience with the EF system overall has been favorable. The fact that I can send correspondence/documents directly from the system, and it is assumed that parties receive these notifications, saves on time in processing. I was just recently given the scanning software, which will save me steps also. One problem I encounter is the receipt of the notification of the conformed RJI of the assigned numbers from the Court Clerk once the "unprocessed" RJI notification has been sent to chambers.

There is also much confusion regarding hard copies received from a nonconsensual participant. 22NYCRR 202.5-b (a)(2)(b)(2)(I) states: "A party who has not consented to participation shall file documents with the court and the County Clerk." This needs to be changed. Non-participants are sending originals directly to chambers. Hard copies should only be filed with the County Clerk, as the keeper of the records, and working copies need to be sent to chambers, not hard copies. Documents sent to chambers are not filed and are not part of the record. If there are local laws that state that hard copies can be sent directly to chambers, then these rules need to be amended. The local laws for each district need to be checked in order to clarify the confusion by non-participating parties. Overall, I am pleased with the system, and once participants realize the time and money they will be saving, it should be a success.

Sheryl A. Holbrook Secretary to the Hon. Phillip R. Rumsey

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elarkin@cortland-co.org



Transitions and changes always create issues that need to be resolved. Difficulties transitioning to e-filing was somewhat minimized in Cortland County because we were already retaining and sharing digital images of civil filings. E-filing has taken us one step further by receiving these documents digitally. As with all new adventures, communication and cooperation are the keys to success. E-filing has saved my office a tremendous amount of time and we continue to strongly encourage our local attorneys to take the logical step to e-filing.

Sincerely,

Elizabeth Larkin Cortland County Clerk

BRADFORD H. KENDALL COUNTY CLERK



Anne-Marie Dignan Deputy

SANDRA C. STRID DEPUTY

February 2, 2015

Jeffrey Carucci Statewide Coordinator for Electronic Filing NYS Unified Court System New York County Courthouse 60 Centre Street New York, New York 10007

Dear Mr. Carucci:

You have invited Dutchess County to submit comments about the implementation of e-filing in Dutchess County Supreme Court. It is my understanding that these comments will be included in Chief Administrative Judge A. Gail Prudenti's report to the Legislature, the Governor and the Chief Judge.

Dutchess County began accepting e-filed cases on a voluntary basis on February 18th, 2014. From that date until December 31st, 2014 we accepted 1262 e-filed cases out of a total of 6082 cases filed or nearly 21%. I can report that e-filing implementation is an unqualified success.

Implementation

Unlike many counties of our size, Dutchess County provides in-house information technology support. Our IT staff (OCIS) develops in-house document management and financial management systems. In order to implement e-filing, our staff had to work closely with the NYSCEF team to integrate our systems with NYSCEF. This was done seamlessly thanks to the resources the Unified Court System has dedicated to e-filing, along with the commitment of the Clerk's office, the Chief Clerk's office, Administrative Law Judge Alan Scheinkman and OCIS.

Benefits

While there are significant monetary savings which I will quantify below, perhaps the greatest benefits accrue to the public and the litigants. For the attorneys, e-filing provides access to our office on a 24/7/365 basis. Payment through the NYSCEF system ensures accuracy, security and cardholder benefits to the payer. The documents are readily available through the NYSCEF system. They are safe and secure and electronic availability minimizes the need for physical transmittal of documents between the Clerk and the Chief Clerk.

NYSCEF has also generated monetary and workflow savings for Clerk staff. A 20% reduction in case files saves approximately \$5000. A reduction in docketing, filing and refilling has allowed us to eliminate a vacant position for an estimated savings of \$55,000.

Barriers to Further Success

Under current law, a County may implement e-filing on a voluntary basis with the consent of the Clerk and the Courts. Mandatory e-filing, however, requires an act of the state legislature. While this requirement was understandable when e-filing was a pilot program, NYSCEF has matured to the point that expansion to a mandatory program should be at the discretion of the Courts and the Clerk jointly. In our case in Dutchess County, the ability to move to a mandatory e-filing program has been frustrated by the legislative calendar. This has delayed anticipated savings. Dutchess County would strongly encourage any revision or expansion of e-filing include the provision that mandatory e-filing be subject only to the Chief Administrative Judge with the consent of the County Clerk.

In conclusion, allow me to express my appreciation to the Chief Administrative Judge for dedicating the necessary resources to NYSCEF, to the staff at NYSCEF who are readily accessible to litigants and staff, to the Judges, Chief Clerk and staff of Dutchess County Supreme Court as well as the staff of the County Clerk's Office for making NYSCEF in Dutchess County an unqualified success.

Sincerely,

Bradford H. Kendall
Dutchess County Clerk



CHRISTOPHER L. JACOBS

COUNTY CLERK

February 5, 2015

Jeffrey Carucci Statewide Coordinator for Electronic Filing NYS Unified Court System New York County Courthouse 60 Centre Street New York. New York 10007

Dear Mr. Carucci:

We are writing in response to your request for comments about the implementation of electronic filing (e-filing) in civil cases in Supreme Court in Erie County.

Erie County was involved in the pilot program for e-filing at its first offering in 2007; began filing mandatorily on April 14, 2013 with residential and commercial mortgage foreclosures; and phased in additional case types beginning October 1, 2013 until all but a few cases types remain eligible for electronic filing. Prior to implementation of the mandatory program, Erie County had accepted 1200 cases. Since April 2013, an additional 17,636 cases have been e-filed and are being managed by the Erie County Clerk's Office.

The most obvious advantage to e-filing is the reduction or elimination of paper. Significant savings in time and expense in handling, filing, retention, and ultimately destruction of paper, will be realized. Incidental to the decrease in paper are the diminished costs of mailing. In addition, there is less potential liability to the Office for misfiling, loss of documents, and any possible backlog or delay in filing the original papers.

Less obvious are the advantages to the filer of 24/7 access provided by the system and the savings to the Clerk's Office in customer service time; we are not answering questions regarding a specific document or confirming that papers have been filed. If filed, the document will be available at NYSCEF and it is available immediately, and if returned for correction, the filer has notice. And unlike paper files, more than one person at a time may view the matter.

The NYSCEF system allows the clerks to make corrections easily to document names, case types, and parties without inconvenience to the filer. The filer can now manage other processes, such as substitution of attorney, previously requiring our input or assistance. Even filing in hard copy on behalf of a self-represented party is managed easily by any of the cashiers.

An additional observation is that the NYSCEF system has required the filers to comply with the rules contained in the CPLR. As everyone becomes "reacquainted" with the rules, progression of the cases will flow more smoothly.

Commenting directly upon the implementation of the system, 20/20 hindsight indicates it would have been extremely helpful to have a more thorough understanding of the system. Although the Manual explains the "how" of the system, it does not explain the "why." In addition, neither the Court Rules nor the CPLR are instructive when trying to learn the actual processes involved in the filing, review and acceptance or rejection of the papers by the court personnel via the NYSCEF system. The understanding and information regarding the system, which is extremely helpful to those using the system, is learned ONLY by trial and error and is not acquired directly, but abstractly. It could be explained within the Manual by defining some of the processes and I urge consideration of this point.

This issue of understanding the system becomes more readily apparent while explaining to the Users of the system, for example, the purpose of the various Document Types, and how that dictates routing and fees. From the beginning, if this information were available, we might not be having some of the issues that we are. And I suggest that it is still not too late as new users are coming into the system daily.

The initial issues concerning the naming and revision of those names of the Document Types and the confusion caused seems now just an aspect of growing pains, although at the time was distressing. It is difficult when instructing someone to use a particular Document Type if the document type no longer exists and the name of its replacement is not known.

As the court users, the filers, and we learn the system, the staff at NYSCEF, including the Resource Center, have readily answered questions, responded courteously to suggestions and work to improve the system. The maneuverability in switching from screen to screen still lags and the speed needs to be improved but we maintain optimism that those issues will be addressed.

Frustrations we suffer at this point deal mostly with the "learning curve" and the level of understanding or expertise of the filers using the system. Recognizing that the attorneys we are speaking with are probably not in actuality the ones uploading, choosing document types, and filing will allow us some patience, and we recognize it is a condition over which we have little control. We expect as the understanding increases, these circumstances will ease.

Overall, I am pleased that we were one of the first counties to participate voluntarily in e-filing and one of the first mandatory counties and I believe that the users in the Erie County Clerk's Office feel very positive about the system and are pleased that the County has engaged so actively in the process.

Sincerely

CHRISTOPHER L. JACOBS Erie County Clerk



COUNTY CLERK'S OFFICE

COUNTY OF KINGS
SUPREME COURT BUILDING
360 ADAMS STREET
BROOKLYN, N.Y. 11201

NANCY T. SUNSHINE
COUNTY CLERK
CLERK OF THE SUPREME COURT
COMMISSIONER OF JURORS

February 6, 2015

Jeffrey Carucci
Statewide Coordinator for Electronic Filing
NYS Unified Court System
New York County Courthouse
60 Center Street
New York, New York 10007

Dear Mr. Carucci.

The implementation of electronic filing in the Office of the Kings County Clerk has been extremely successful. Attorneys, as well as litigants, have appreciated the ease and efficiency of filing papers electronically from their home, office or any remote location with appropriate computer access.

The NYSCEF system, bearing the Kings County Clerk's banner for filed documents in Kings County, promotes transparency, accountability and confidence in the court system as litigants, attorneys, parties, judges, court staff and the public, have equal, simultaneous and contemporaneous access to all filed documents, unless, of course, a court order or law restricts access to a court file or a particular document. The NYSCEF system also provides an efficient and quick mechanism for the transfer of actions between counties, a significant time-saver for parties.

The NYSCEF system is more than an electronic filing system, it is also a powerful and effective communication tool, which provides immediate notice to all parties of filed documents, as well as notice to a filing party of the need to remedy a procedural defect which precludes filing, e.g. improper venue. This effective communication aspect of the NYSCEF system permits the expeditious correction of defective papers and efficient filing of said corrected documents. The elimination of delay provided by the NYSCEF communication tool enhances efficiency and promotes confidence and trust in the court system.

The success and the positive experience of users with the NYSCEF system is demonstrated by the significant and continuing increase in e-filings of civil cases, especially in the area of consensual civil cases. In 2013, there were 16,043 case commenced via the NYSCEF system. In 2014, that number increased to 20,242 with no expansion of mandatory case types. As each year passes, more attorneys and litigants are realizing how easy it is to e-file with my office. In fact, the total number of attorneys and pro-se litigants who have electronically filed documents in

Kings County to date is 10,102.

More than eight out of ten of our civil actions are commenced electronically. In 2014, 20,242 of our 26,051 civil actions, or seventy-eight percent (78%), were commenced electronically. In 2013, fifty-one percent (51%) of the civil actions commenced in Kings County were filed electronically. The increase in the electronic commencement of actions in Kings County from year to year has been dramatic. This trend of increased electronic filing of cases in Kings County is continuing in 2015.

Lastly, NYSCEF is a user friendly system with flexibility to meet changes required by statute or requested by County Clerks to implement procedural improvements. As Kings County Clerk, I maintain an e-file kiosk on premises to assist filing parties to e-file documents when necessary. My staff is available to assist attorneys and litigants with e-file inquiries and participate with me in lecturing at Continuing Legal Education programs at various bar associations in Kings County.

As I look to the future, as Kings County Clerk, I embrace the expansion of electronic filing in more civil case types.

Sincerely,

Noney T. Sunshine

County Clerk, Kings County

Commissioner of Jurors

Maureen O'Connell County Clerk



OFFICE OF THE COUNTY CLERK

240 OLD COUNTRY ROAD MINEOLA, NEW YORK 11501-4249 TELEPHONE: 516 571-2661 FAX: 516 742-4099

February 11, 2015

Jeffrey Carucci Statewide Coordinator for Electronic Filing NYS Unified Court System New York County Courthouse 60 Centre Street New York, New York 10007

Dear Mr. Carucci:

Please allow this correspondence to serve as a reply to your request to the New York State Association of County Clerks seeking comments from county clerks regarding their experience with the NYSEF e-filing program. It is my hope that this information will assist Chief Administrative Judge A. Gail Prudenti as she prepares her report on electronic filing for submission to the Legislature, Governor, and Chief Judge.

As one of the pilot counties for the NYSCEF program, my office was the first statewide to work with your staff and the Department of Technology for the purpose of implementing electronic filing of Small Claims Assessment Review petitions (SCARs). Since e-filing of SCARs launched in 2009, the achievement of this outstanding program is evident in Nassau County SCAR petitions filed electronically through NYSCEF totaling almost 73,000 to date. A majority of our filings have been comprised of consensual cases mostly in torts, contracts, consumer credit transactions and medical malpractice; however, Nassau has more recently adopted mandatory e-filing in commercial, civil forfeiture, and tax certiorari case types. In my experience, the unintended benefit of becoming acquainted with the system for mandatory case types has encouraged practitioners to expand their use of NYSCEF to consensual case types as well. Along with the Tenth District's Chief Administrative Judge, Hon. Thomas Adams, Nassau County looks to add additional case types in the near future.

The conferences you tirelessly conducted with court staff, county departments, and members of the Nassau Bar Association with a view toward making enhancements, reviewing specifications, and describing programmatic changes necessary to participate have been a model to follow as we expand mandatory e-filing in our county to include as many case types as possible. As a result of this shared vision, there has been extremely positive feedback, which is indicative of the unquestionable support this initiative has enjoyed. The quality of the e-filing program along with the accessibility of the outstanding NYSCEF Resource Center staff who are dedicated to the

Mr. Jeffrey Carucci February 11, 2015 Page 2

success of the program continue to generate a significant amount of goodwill among the practitioners who rely on it, a direct result of the efforts of you and your team.

I also wanted to take this opportunity to thank you for continuing to dedicate the resources necessary to make this program better every year. This has been a collaborative effort, and I am appreciative of your commitment to enhance the system, streamline filing requirements, and be responsive to the needs of practitioners, while reducing paper consumption. I hope the relationship that developed between Nassau County and NYSCEF may continue to serve as a model throughout the state.

Very truly yours,

MAUREEN O'CONNELL

Nassau County Clerk

cc. Honorable Thomas Adams
Administrative Judge
100 Supreme Court Drive
Mineola, New York 11501

Maureen O'Connell



NIAGARA COUNTY COUNTY CLERK'S OFFICE COURTHOUSE P.O. BOX 461 LOCKPORT, NEW YORK 14094-0461 WAYNE F. JAGOW County Clerk

WENDY J. ROBERSON First Deputy County Clerk

(716) 439-7022 (716) 439-7035 Fax

February 12, 2015

Jeffery Carucci
Office of Court Administration
60 Centre Street
New York, NY 10007

Dear Mr. Carucci,

The Niagara County Clerk's Office has served as a partner with the New York State Office of Court Administration since the passage of the original efiling enabling legislation.

We are very pleased to have been on the forefront of this major project, and look forward to moving toward a mandatory program in the future. Our efilings have increased substantially since a neighboring county became mandatory.

We are especially pleased with the willingness for our two organizations to work together as changes are implemented to better serve our customers and staff.

Niagara County looks to a future that will bring continued enhancements in efiling technology, as well as a shared partnership with the Office of Court Administration.

Yours truly,

Wayne F. Jagow

NIAGARA COUNTY CLERK



ONONDAGA COUNTY CLERK'S OFFICE

Room 200 Court House, Syracuse, New York 13202-2171 315.435.2227 • Fax 315.435.3455 SANDRA A. SCHEPP County Clerk

Re: Comments on Implementation of E-filing

February 11, 2015

Your Honor,

I was the Onondaga County Clerks representative for the implementation of E-filing in Onondaga County and continue today in that role. The launch of E-filing was a great success that I am very proud to have been a part of. The County Clerk and the Supreme Court have always had an excellent working relationship. I feel this was an essential element for our successful implementation considering the magnitude of change this brought to the Courts, the bar and the County Clerk. Jeffrey Carucci and his staff's knowledge, dedication and enthusiasm in addressing all problems, questions and concerns made implementing E-filing a smooth and rewarding process, and I continue to receive an extremely high level of support from the Resource Center.

The decision to go to mandatory e-filing was one of the best decisions ever made for this Clerk's office. I look forward to adding more case types to our mandatory e-filing requirement in the future and see more counties make the move to court filing thru NYSCEF.

Malcolm Merrill

Deputy County Clerk



Queens County Clerk Clerk of the Supreme Court Commissioner of Jurors



Audrey I. Pheffer

Queens County Clerk Clerk of the Supreme Court & Commissioner of Jurors

Francis K. Kenna, Esq. Chief Deputy County Clerk

Jefferey Carucci Office of Court Administration 60 Centre Street New York, New York 10007 Alexis Cuffee First Deputy County Clerk

Ruth Deutsch Second Deputy County Clerk

Jo Ann Shapiro Second Deputy County Clerk

Alexandra Zervopoulos, Esq.

Counsel to the County Clerk

RE: IMPLEMENTATION OF ELECTRONIC FILINGS IN CIVIL CASES

Dear Mr. Carucci.

Queens County has been pleased to have been involved in the implementation of mandatory electronic filing and looks forward to its expansion. Mandatory electronic filing has proven to be very cost-effective. It has greatly reduced the number of paper filings in the system, conserving staff time, storage, paper and printing costs.

Additionally, electronic filing promotes greater convenience to its users. It provides instant access to court records without the need to come into the courthouse. Users are able to commence actions, file and view court documents from their own computers even in off hours, weekends and snowstorms.

There is a constant collaboration of efforts between our county and the e-filing resource center to continuously enhance the system. NYSCEF staff is always willing to address any concerns and provide improvements to the system. We look forward to continue working with NYSCEF to expand mandatory electronic filings in all case types in Queens County.

Sincerely,

Audrey I. Pheffer Queens County Clerk

audreal heffer

EXECUTIVE OFFICE: 88-11 Sutphin Boulevard, Room 105, Jamaica, New York 11435, (718) 298-0601

Sutphin Boulevard, Room 244, Jamaica, New York 11435, (718) 262-7223
 Queens Boulevard, Room CJ1, Kew Gardens, New York 11415, (718) 298-0621
 Court Square, Room B58, Long Island City, New York 11101, (718) 298-0624



RICHMOND COUNTY CLERK

STEPHEN J. FIALA
County Ciera & Commissioner of Jurors

Richmond County Clerk's Perspective on e-Filing: Richmond County

Richmond County has experienced a dramatic increase in the number of cases commenced electronically since we began accepting electronic filed cases in 2004. The enabling legislation for electronic filing was enacted in 1999 and Richmond County saw its first electronically filed tax certiorari cases in 2004. That year, 212 cases were commenced electronically, a mere 3% of all cases. While it took a few years for e-filing to catch on, by 2010 there was a steady increase each year in the number of cases commenced under the Consensual Electronic Filing Program. In 2014. 2.829 of the total 6,622 cases were commenced electronically, 43% of all cases. This is particularly significant when you consider not all case types are permissible under the legislation, such as, matrimonial actions and guardianship proceedings. When you discount such case types from the equation, we jump to an e-filing rate of approximately 52%.

In 2014, 98% of all tax certiorari cases, 74% of foreclosure actions and near 100% of the Worker's Compensation Applications for Judgment were filed electronically. We would welcome an expansion of permissible case types for e-filing. It has been our experience that once an attorney e-files, they quickly realize the case of the system and thereafter continue to utilize the system.

Electronic filing creates instant access to court documents. With paper cases, once a Judge signs an order, it could take well over a week for it to make its way through the various touch points in the system before ending up in the physical case file. With e-filed cases, once a Judge signs an order, the part clerk uploads the document to the NYSCEF system for County Clerk review. Once the case is verified, the approved order is instantly accessible, a process that takes minutes, as opposed to weeks. The same holds for all electronically filed court documents.

Electronic filing **creates costs savings**. Specifically, the number of case jackets ordered, the amount of paper used and the amount of printer ink utilized is reduced significantly. Additionally, as attorneys can access these files remotely, the cost savings accorded to law firms is immeasurable. They no longer have to send someone to the Office for routine matters, such as, checking on an order or printing out a simple copy. The same goes for any member of the public who wishes to view a publicly accessible file.

Electronic filing reduces the storage space necessary for court files. As there are no hard copies, all documents are stored electronically which eliminates the need for file jackets, physical storage and internal imaging. This arrests a long chronic problem for County Clerk's Offices.

The Electronic Stamping Program has proven to be an incredible tool for Richmond County. Judgments of Foreclosure, Confessions of Judgment, Default Judgments, Judgments on Order and other types of judgments can be reviewed, docketed, stamped and uploaded without having to print out a single piece of paper. In addition to the cost savings, significant time savings is realized and provides the parties with instant notification of the entry of the judgment. There is no longer a need to stamp a copy and mail it back to the submitting party. The access is instant and paper, time and postage costs are saved for the parties and the court.

There is constant and open communication between our county and the e-filing resource center which has produced many improved enhancements to the system. We have had internal training by NYSCEF staff and are fortunate to have dedicated NYSCEF staff assigned to our county, creating even better lines of communication. We continue to work toward improving the system and our service to the public and the Court on a daily basis. With more than half of all Richmond County cases commenced electronically in a voluntary program, the future is here.

The Office of the Richmond County Clerk believes the NYSCEF system has been a proven success. Further, as we view ourselves as a service organization, we stand ready to facilitate any expansion efforts deemed appropriate and desirable by the UCS and the Supreme Court of Richmond County. We look forward to working in concert with 13th Judicial District Administrative Judge Judith N. McMahon, and her team, on any such future efforts they deem appropriate.

Sjf/ld February 5, 2005 PAUL PIPERATO County Clerk



COUNTY OF ROCKLAND

OFFICE OF THE COUNTY CLERK

1 SOUTH MAIN STREET - SUITE 100
NEW CITY, NEW YORK 10956-3549

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DONNA SILBERMAN

JAMIE GRAHAM

JOSEPH ALONGI

January 30, 2015

Mr. Jeffrey Carucci Statewide Coordinator for Electronic Filing NYS Unified Court System New York County Courthouse 60 Centre Street New York, New York 10007

Dear Mr. Carucci:

Thank you for the opportunity to provide input on electronic filing for Judge Prudenti's report. It is my pleasure to inform you of our successes on integrating e-filing. The benefits have been significant, and in particular, we have realized the following:

- Greater efficiency in filing and retrieving records
- Cost savings on supplies
- Reduction of staff
- Cost savings to attorneys and public

We attribute our success to:

- Many of the protocols and issues were initially ironed out by the Westchester County Clerk. Their expertise, guidance and diligence certainly played a big part in allowing us to smoothly incorporate e-filing into our procedures. Our software company was able to tap their knowledge and helped guide us through the process.
- The NYSEF Support Center, which you so proficiently headed, was priceless in working with both the County Clerk and NYS Court staffs. They were always there to help us as problems arose and were helpful in teaching our Rockland County attorneys.

- A good working relationship with our Chief Clerk, John Hussey, and his staff
 was instrumental in resolving issues by utilizing constant feedback and teamwork
 on a day-to-day basis.
- Constant communication with the Rockland County Bar Association was very helpful in educating attorneys and their supporting legal staff. This communication resulted in a clear understanding of the new system as well as increased acceptance of its integration.

Electronic filing has certainly been a positive change to our operations. In 2010, we had 13,500 hard copy court cases. By 2012, the first full year of e-filing, 73% of our cases were e-filed. Our numbers have remained strong and in 2013, there were 78%, followed by 77% in 2014.

Based on the above, I can unequivocally state that e-filing has been successfully integrated, well-accepted and beneficial to all involved. Please feel free to contact me if you have further questions or require additional information.

Sincerely,

PAUL PIPERATO
Rockland County Clerk

PP/dv

Jeffrey Carucci

From:

Paul Piperato < PiperatP@co.rockland.ny.us>

Sent:

Friday, January 30, 2015 3:59 PM Deb Vobroucek; Jeffrey Carucci

To: Cc:

Subject:

Donna Silberman RE: Input on e-filing

Jeff

While omitted in my letter, please stress we would like to see all action being able to e-file.

Thanks

Paul

Rockland County Clerk Paul Piperato Clerk, Supreme & County Courts County Records Management Officer Rockland County Courthouse 1 South Main Street, Suite 100 New City, NY 10956

PHONE: (845) 638-5134 FAX: (845) 638-5647

EMAIL: piperatp@co.rockland.ny.us WEBSITE: www.rocklandcountyclerk.com

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COUNTY OF SUFFOLK



February 6, 2015

Jeffrey Carucci Statewide Coordinator for Electronic Filing Office of Court Administration 60 Centre Street New York, NY 10007

Dear Mr. Carucci:

Thank you for the opportunity to provide comments on Suffolk County's experience with electronic filing ("E-filing") through the New York State Courts Electronic Filing ("NYSCEF") System.

Mandatory E-filing in Suffolk County encompasses Commercial Division matters, medical, dental and podiatric malpractice, Small Claims Assessment Review matters, residential real property foreclosure actions and mechanics liens. All other commercial, contract, tort and tax certiorari matters are consensual filings. As of the end of 2014, an average of forty-one percent (41%) of all filings (both cases and documents within cases) are being E-filed.

Implementation of E-filing in Suffolk County has had its share of growing pains like any major initiative does. The initial difficulties and trepidation staff experienced has dissolved and they have come to appreciate the advantages of E-filing. Communication between County Clerk, Chief Clerk and NYSCEF staff has been cooperative and any issues are resolved expediently. Over time, staff regularly involved with E-filing have indicated that they are now comfortable with the process, that it saves them significant time versus paper filings, that overall they prefer E-filing and would like more, if not all, case types to be E-file cases. In addition, attorneys have become much more knowledgeable about the process which has reduced the time staff is involved in fielding questions.

Significant efficiencies have been realized with the synchronization of the NYSCEF and Court Minutes systems due to the automatic entry of certain document types into the minutes. For example, Affidavits of Service and post-Request For Judicial Intervention Notices of Appearance are automatically entered as minutes from NYSCEF eliminating the need for staff intervention. Staff has been able to devote more effort into reducing the processing time of other work and maintaining a reasonable processing time from receipt of papers and their ultimate placement in the appropriate file. The data entry and filing processes, in particular, have been reduced dramatically. At the beginning of 2014, the data entry and filing processes were one and two months, respectively. By the end of the second quarter of 2014, processing times were 5-7 and 15-20 days, respectively. That downward trend has continued and we have seen an even further reduction in both instances. A significant reason for this steady decline in document processing time was the increase in the number of mandated E-file cases in Suffolk County as of March, 2014. Concomitantly, a substantial reduction in the over-the-counter submission of papers has also been experienced.

Based on a simplified space analysis undertaken by this Office, future records storage capacity needs can be reduced extensively. For every 1,000 additional index numbers filed electronically, approximately seventeen shelves do not need to be allocated for physical files. In addition to the operational relief the space savings afford County Clerks, ease of accessibility and records preservation are also greatly enhanced by E-filing versus maintenance of paper files.

Overall, the move toward E-filing has been very positive and we look forward to expanding the breadth of cases which must be electronically filed. This Office would like to make all current consensual cases mandatory as well as include criminal, Article 78 and Mental Hygiene cases in the next phase of implementation.

Thank you again for the opportunity to allow this Office to share its experience with E-filing. We look forward to continuing to work together to make this program a success.

Sincerely, Judith a. Pascale

Judith A. Pascale

Suffolk County Clerk



Timothy C. Idoni Westchester County Clerk

January 30, 2015

Jeffrey Carucci Statewide Coordinator for Electronic Filing NYS Unified Court System New York County Courthouse 60 Centre Street New York, New York 10007

Dear Mr. Carucci,

Thank you for inviting the Office of the Westchester County Clerk to comment on our positive experience with electronic filing through the New York State Courts Electronic Filing ("NYSCEF") System. We understand our comments may be included in a report on electronic filing being submitted to the Governor, Legislature and Chief Judge.

The implementation of electronic filing in Westchester County has been a tremendous success. Customers enjoy the convenience of filing papers from a home or office and are supported by knowledgeable and dedicated staff at the E-filing Resource Center. The NYSCEF System provides transparency and accountability as litigants can see exactly where documents are and who has processed them. Document flow among the litigants, County Clerk, Chief Clerk of the Courts and judicial chambers occurs more quickly and is documented more accurately. Local tax dollars are saved as our office no longer needs to scan documents, enter indexing data, or process payments by check. In short, electronic filing has transformed the way we do business in the Office of the Westchester County Clerk and the results are impressive.

As we look to the future, we hope that electronic filing will soon become permissible for all civil case types and that discretion to make electronic filing mandatory for a particular case type will be placed in the hands of the Administrative Judge, in consultation with the county involved.

Background

Westchester launched electronic filing of tax certiorari petitions on a consensual basis in April of 2008, but because the municipal defendants in tax certiorari cases refused to consent to efiling, utilization of NYSCEF was sluggish. In 2009, state legislation provided that the electronic filing of tort actions would become mandatory in Westchester County and we began actively working with the Ninth Judicial District and Office of Court Administration staff to insure a smooth transition to mandatory e-filing in Westchester County. In June of 2010, we began accepting electronically filed Commercial Division eligible cases on a consensual basis. On January 19, 2011, we began accepting all commercial and tort actions on a consensual basis. On February 1, 2011, electronic filing of Commercial Division eligible cases became mandatory. On March 1, 2011, electronic filing of tort actions became mandatory and Small Claims Assessment Review actions were added as a consensual case type. On June 1, 2011 the electronic filing of all commercial actions, including breach of contract actions, became mandatory. On January 17, 2012, the electronic filing of all foreclosure and tax certiorari cases. became mandatory. On April 3, 2013, Westchester County was designated to institute a pilot program to become the first county in New York State to accept matrimonial actions electronically on a consensual basis. At present, all civil actions with the exception of Article 78, Election Law, Matrimonial and Mental Hygiene actions must be commenced electronically. The electronic filing of Matrimonial actions is permissible, but not required.

Volume

We are proud to have a significant volume of documents entering and leaving our office electronically each day.

More than eight out of ten of our civil actions are commenced electronically. In 2013, 19,452 of our 23,792 civil actions, or eighty one percent (81%), were commenced electronically. In 2014, 19,466 of 23,303, or eighty three and a half percent (83.5%) of our civil actions were commenced electronically.

The number of electronically submitted documents, which range from Affidavits of Service to Judgments to Summons and Complaints, increases each year. In 2013, we received 230,283 documents electronically. In 2014, we received 280,380 documents electronically.

Training and Promotion

Westchester County is proud of the training effort we have instituted with the launch of mandatory e-filing and feel that our strong support of our filers has been a key to our success. To date, over one thousand five hundred individuals have taken a NYSCEF Continuing Legal Education class conducted here in Westchester. In addition to holding NYSCEF training classes near our White Plains office, we have travelled to large law offices to conduct these training sessions. In addition, classes have been sponsored by the Westchester County Bar

Association, the Westchester Women's Bar Association, the Mount Vernon Bar Association, the New Rochelle Bar Association, the Northern Westchester Bar Association, the White Plains Bar Association, the Yonkers Bar Association, the Yorktown Bar Association and the Columbian Lawyers.

Results

Our office has experienced three years with the vast majority of new civil cases being commenced electronically and are extremely pleased the results for the following reasons:

- NYSCEF Provides Tremendous Convenience for Our Customers: Customers have the option of filing a document with our office any hour of the day and any day of the week. Currently customers who visit our office to file must travel to downtown White Plains, in some cases paying to park, enter the courthouse, proceed through security and travel up to the third floor where our Legal Division is located. Alternatively customers mail documents to our office, experiencing both a mailing cost and a delay in filing while the documents are travelling to our office via overnight or regular mail. By using the NYSCEF System, the customer eliminates the time and costs associated with getting paper filings to our office, as well as the risk that these paper filing could be misrouted along the way. There is no doubt this is both efficient and cost-effective for our customers.
- NYSCEF Saves Taxpayer Dollars: Allowing our customers to use the NYSCEF system is cost effective. While an initial investment in NYSCEF is required for counties, significant annual cost savings can be quickly realized. Clerks no longer need to data enter case captions, action types and document types as customers are doing that in NYSCEF. Clerks no longer need to input payment information for customers who pay by credit card or use the "Debit at County Clerk" option. As filings enter the office as scanned images, the cost of scanning and reviewing scanned images for quality is eliminated. As filings are electronically routed into electronic dockets, the cost of having a clerk place the paper filing in the proper file jacket is eliminated and, paper file jackets do not need to be purchased for e-filed cases. While there is a cost to maintaining a database of images which require permanent retention, the more significant cost associated with storing physical files is eliminated. A more detailed breakdown of cost savings follows in the next section.
- NYSCEF Is Easy to Learn and Use: The updated NYSCEF System launched on January 19, 2011 is a user friendly application with clean graphics and clear instructions. Users now find page specific help screens which guide them step-bystep through the filing process. In addition, users can move back and forth among various filing screens with a tremendous amount of flexibility.

• NYSCEF Is a Successful Green Initiative: The Office of the Westchester County Clerk receives approximately four million pieces of paper each year and our goal has always been to try to go green one piece of paper at a time. While the NYSCEF process is not paperless, the amount of paper required by the process is greatly reduced. In addition, the need to travel to our White Plains office is eliminated. Alternatively, if filings had been mailed, the paper and travel involved in transporting these filings to our office is eliminated.

Cost Savings Achieved

In the current atmosphere of a shrinking government workforce and tightened budgets, elected officials are under pressure to do more with less. In Westchester County, the Office of the Westchester County Clerk recognized that electronic filing could bring efficiencies and cost-savings at exactly the right time. Our office has been able to achieve the following specific cost-savings through the implementation of e-filing:

- Legal Document Scanning: The Westchester County Clerk spends approximately \$400,000 annually for legal documents to be scanned by an outside vendor. As electronically filed documents have already been scanned by the submitter, every page filed through the NYSCEF System saves eighteen cents for Westchester County. Our 2014 scanning costs will be down approximately \$150,000. We expect annual savings when mandatory electronic filing is fully implemented for active cases will be over \$250,000 per year.
- Legal Document Storage: At the end of 2013, our office released half of our space at an off-site interim storage facility, saving approximately \$20,000 per year. A major factor in the release of space was the reduced number of paper court filings. Court records that are more than ten years old are boxed and sent to the County Archives and are retained pursuant to the appropriate retention schedule at a cost of approximately \$7.50 per box per year. Our office will no longer send any civil case files to the Archives, resulting in an annual savings of over \$5,000 per commencement year.
- Legal File Jackets: As approximately eighty percent of new cases are electronically filed in Westchester County, fewer legal file jackets are necessary resulting in a continuing savings of over \$5,000 each year.
- Personnel Costs: The personnel cost savings resulting from electronic filing are difficult to itemize. However, there are distinct points in the work flow where efficiencies are captured. A cashier no longer completes preliminary data entry of information such as party names, case type or method of payment. Data entry staff does not complete additional data entry of items such as multiple parties or prepare filings for scanning. Filing staff does not sort and file paper documents into the proper case jacket. Customers no longer call our office to ask if a filing sent by

regular mail has been received and staffers no longer have to spend time away from their desk searching through piles of documents to determine whether a paper filing has reached our office. And when these records have aged, they are not boxed and manually moved offsite to either an interim storage facility or the County Archives.

Teamwork

Our success is the result of being part of a dedicated team which has included members of my staff as well as 9th Judicial District Administrative Judge Alan Scheinkman and his staff. In addition, all of our efforts were supported by you as the Statewide Coordinator for Electronic Filing. Our team set ambitious goals which were embraced and accomplished by members of our staff in the County Clerk's Office as well as court staff including Chief Clerk Nancy Barry and Chief Court Attorney Diane Clerkin. I highlight our teamwork because electronic filing only becomes seamless for all the parties if everyone is able to work together, balance priorities, and follow through on establishing clear procedures. I would also like to note that the dedicated and knowledgeable staff at the E-Filing Resource Center has done a tremendous job supporting our staff and our customers in Westchester County. Resource Center staffers have been willing to learn about the specific needs and requirements in Westchester and have approached our various modification requests with an open mind and positive attitude which has contributed to our success.

The Future

The Office of the Westchester County Clerk would like to see e-filing expanded so that Article 78, Election Law and Mental Hygiene cases are eligible for both voluntary and eventually mandatory electronic filing. Further, we would like Matrimonial actions to be made eligible for mandatory electronic filing.

When electronic filing was originally launched, the system did not have features in place which appropriately secured images and limited viewing to authorized parties. Now that the structure in the NYSCEF System exists to handle these secure filings, I believe that electronically submitted filings offer higher security than a filing existing in paper and moving through the process in hardcopy. Further, it is possible to track and monitor who has accessed a particular image if required.

Currently prohibited case types should be eligible for electronic filing for the following reasons:

Mental Hygiene: There are three general types of actions filed in our office pursuant to the Mental Hygiene Law: guardianship actions (under article 81), civil confinement actions (under article 10) and retention and NY Safe Act proceedings (under article 9). We believe that the guardianship actions filed pursuant to Article 81 are appropriate for mandatory electronic filing for a number of reasons. First, there is a defined guardianship bar which can be trained and supported during a transition to electronic filing. Second, the NYSCEF system offers appropriate protection for documents which contain personal information. Third, in cases where

a guardian is appointed, annual reports will be filed until the guardianship is terminated and the NYSCEF System offers functionality to serve and store these reports in an efficient manner. The civil confinement actions filed pursuant to Article 10 of the Mental Hygiene Law, are appropriate for electronic filing also, provided all statutory privacy requirements are met. As these actions are filed by the New York State Attorney General's office, one office would need to be supported during a transition to electronic filing. The applications filed in the County Clerk's Office pursuant to Article 9 of the Mental Hygiene Law may not be appropriate at this time due to varied local practices.

- Election Law: As these matters are time-sensitive, electronic filing offers the benefit of delivering the filings in an extremely efficient manner. Local protocols already offer a structure for the submission of items such as ex parte orders. These protocols could be adapted, as necessary, for election law cases. In addition, should papers in election law matter be taken to a judge outside of regular business hours, protocols could simply require the uploading of the documents into the NYSCEF System within a specified period of time.
- Article 78: This case type is the most suitable of the three for electronic filing. The structure is already in place to move this type of filing efficiently through the court system. If authorized, outreach to prisons and correctional facilities to provide the proper forms for dissemination from their libraries should be conducted.

We believe strongly that NYSCEF has a bright future and we want nothing more than to be the county where e-filing is comprehensive and embraced by our customers and partners in the courts. Should the legislature decide to expand the electronic filing program to include the currently prohibited case types, we look forward to working with your office to bring these case types to Westchester's electronic filing program.

Thank you for the opportunity to share how successful the electronic filing of civil actions in the Supreme Court has been in Westchester County. We look forward to a continued partnership and hope that electronic filing will become a permanent and comprehensive solution for the future.

Sincerely

Timothy C/Idoni

Westchester County Clerk

MANAGING ATTORNEYS AND CLERKS ASSOCIATION, INC.

Maura A. McLoughlin, President Ira E. Wiener, Vice President Timothy K. Beeken,, Treasurer John D. Bové, Secretary Richard v. Conza Henry J. Kennedy Peter McGowan Dennis Murphy Poppy B. Quattlebaum Judith L. Strigaro Owen G. Wallace Directors

March 3, 2015

VIA EMAIL

Mr. Jeffrey Carucci Statewide Coordinator for E-Filing Office of Court Administration 60 Centre Street New York, New York 10007

Re: NYSCEF Experiences And Comments

Dear Jeff:

In response to your February 16, 2015, e-mail seeking comment on user experiences with NYSCEF, the Board of the Managing Attorneys and Clerks Association submits the following, which was submitted in the Fall of 2014, in response to John Werner's request for comment. In response to that request the MACA Board asked our members for feedback and comments with respect to expansion of NYSCEF. Below is a brief synopsis of the responses we received.

The members of MACA tend to be heavy users of NYSCEF. The feedback we received overwhelmingly supports expansion of NYSCEF, not only to more counties statewide, but also to the Appellate Divisions, and the Court of Appeals. In addition to supporting expansion of the e-filing system, the comments indicate support for a uniform filing system, with the various Courts being limited in the amount of customization so the system is consistent state wide. An expansion of the categories of cases subject to e-filing is also supported by the MACA members who responded. For example, Article 78 proceedings should be subject to NYSCEF, in addition to Surrogates Court filings, matrimonial filings, and Guardianship filings, subject of course to the Court's ability to limit access to the respective files to parties, counsel of record, and Court personnel.

Additional comments, in no particular order, include the request for on-line fee payments to be processed in real time, and likewise, the simultaneous issuance of Index Numbers when an action is commenced via NYSCEF. The desire for NYSCEF to either show appearance dates or

have a direct case link to WebCivilSupreme so that anyone seeking case information can essentially have one point of access. Some attorneys, for varying reasons, monitor cases on which the attorney has not actually appeared or consented to represent a party. Currently, the only way to do so is a fee based monitor system. The NYSCEF system should enable attorneys to set up such monitors.

With respect to filing documents, filers would like the ability to file a single document under seal without having to call the clerk each time, and without having to have the entire case sealed. Also only certain documents filed on the NYSCEF system are endorsed at the top of the front page with the filing information. It would be nice if all filed documents were endorsed with the filing information at the top of the first page.

The above constitutes only a portion of the comments that we received from our membership. I have attached hereto the comments as originally received so that you can see them in full. Please let me, or any member of the Board of Directors of the Managing Attorneys and Clerks Association, know if we can be of further assistance with respect to your committee's presentation to the State Legislature.

Respectfully,

s/Owen G. Wallace

Owen G. Wallace Member of MACA Board of Directors

cc: Board of Directors of the Managing Attorneys and Clerks Association

APPENDIX C

ANALYSIS OF EFFICIENCIES OF E-FILING AND ESTIMATED COST SAVINGS

Analysis of Efficiencies of E-Filing and Estimated Cost Savings

1. Benefits for Counsel and Their Clients

E-FILING IS EXTRAORDINARILY CONVENIENT for attorneys and helps to conserve attorney time and reduce expenses. Such reductions of course inure to the benefit of litigants.

- Electronic filings can be made at any time, whether the County Clerk's Office or the court is open or not, and from almost anywhere. Attorneys can file at night, on weekends and holidays, and during emergencies, such as snowstorms and hurricanes. This gives attorneys additional time to respond to the requirements of their clients, yet meet deadlines.
- Attorneys in an e-filed case have access to the complete file simultaneously by as many counsel as are working on a matter, at any time of any day of the week, and from virtually anywhere. This translates into efficiency in attorney work, as well as a savings on intra-office delivery expenses.
- Service and filing (and the electronic payment of filing fees) are made through the NYSCEF system automatically with one click of the "send" button. There is a major

- saving in time whenever counsel can use NYSCEF instead of delivering documents in person to the court or the County Clerk or serving them by hand. E-filing is a great convenience for the attorney practicing in, say, Suffolk County, who has a case pending in Westchester County and who otherwise would need to make a trip in person to the courthouse to deliver documents and to serve adversaries there. It is likewise greatly helpful in those areas upstate where there are large distances that separate attorneys from the courthouse, the County Clerk's Office and the offices of opposing counsel.
- If counsel normally use clerks or messengers to file and serve documents, e-filing will bring about a significant reduction in litigation expenses, since filing and service can be made directly from the attorney's office without the necessity of paying messenger fees or hiring messenger staff. NYSCEF imposes no charge on attorneys and their clients (other than the existing statutory filing fees) to file or serve documents, consult the electronic docket, or print documents from the NYSCEF system.¹

 $http://198.173.15.31/newsite//GI_NEWS/newscontent/Press_Release/2009/05-12-09_Clerk_Brown_Launches_EFiling_in_Cook_County.pdf. http://198.173.15.31/newsite//GI_NEWS/newscontent/Press_Release/2009/05-12-09_Clerk_Brown_Launches_E-Filing_in_Cook_County.pdf.$

Case File Xpress, a vendor, estimates the cost to a small firm of delivering a document of 10 pages to court as \$ 25.50. Case File Xpress, A Case Study: Time is Money: e-Filing Saves Both, at 6 (2010). The same study estimates that, counting attorney and legal assistant time, an average firm could save as much as \$75 per filing. Wiznet, another vendor, estimated the cost of filing one 15-page document and serving a copy of it on one attorney at \$13.25 to file and \$3.08, \$12 and \$20 to serve by mail, by Fed Ex and by hand respectively. www.ncsc.org/Topics/Technology/Electronic-Filing/Resource-Guide.aspx. The Clerk of the Cook County Circuit Court, Illinois was quoted as follows: "Taking into account the attorney's time to travel to the courthouse, the time to stand in line, and the printing costs (paper and equipment), including the printing costs for serving opposing counsel with subsequent pleadings, it was determined that attorneys can realize a savings as high as an estimated \$97.69 per filing, assuming a 10-page complaint filed electronically, and an estimated \$117.93 per filing for an assumed 10-page subsequent pleading filed electronically, 'said Clerk [of the Court] Brown."

■ Photocopy and storage costs are reduced with e-filing.²

These points are illustrated concretely in the following analysis regarding Supreme Court cases:

- Assuming a cost of \$20 to file a document commencing a case in hard copy in, for example, one County Clerk's Office in which 20,000 index numbers are issued annually, litigants will pay each year \$400,000 for this one transaction alone in this single county.
- Documents and an RJI were filed in just under 200,000 cases in Supreme Court statewide in 2013. Using the figure cited, the cost to deliver them to the County Clerk would have been \$4 million.
- Just under 242,000 motions (excluding ex parte applications) were filed in Supreme Court statewide in 2013. A reasonable estimate would be that three documents were filed on each motion on average. At a cost of \$20 per filing, the expense to the litigants for delivering these documents to court would have been \$14.5 million.
- If a preliminary conference were held in one quarter of the cases that were commenced (RJI cases) in 2013 in response to a request therefor, the total cost to deliver the request to the court would have amounted to about \$1 million.
- Assuming the total cost of serving the three sets of motion-related documents and the preliminary conference requests would be \$3.00 each (a conservative figure since it

excludes use of delivery service or service by hand), the expense to serve just one attorney per case with these documents would total \$2.3 million.

In order to achieve savings of all of these costs, attorneys and litigants need only employ a modest amount of software and hardware that are in common use and quite inexpensive and probably, in most instances, already in counsel's office.

The benefits that e-filing brings are not confined to large law firms, with their many staff members and technology specialists. To the contrary, e-filing is particularly helpful to the solo and small firm practitioner, the economics of whose practice is built upon, in important part, special attentiveness to minimizing costs and keeping staffing levels lean. As a leading bar group wrote:

Some may hold the view that e-filing is really for large firms, not solo and small-firm practitioners. This is not true. Large firms have battalions of clerks to handle filing and service and clients who can afford the additional expenses entailed. Thus, perhaps even more than the large firm, it may be the sole or small-firm practitioner who benefits most, economically and otherwise, from e-filing. And, although large firms may also have experts in technology on staff, such expertise is unnecessary to use the e-filing system effectively and easily. E-filing has the great potential to "level the playing field." We say this as an Association that numbers thousands of solo and small-firm practitioners among its members, an Association that is surely one of the Bar groups in the State most representative of that segment of the Bar.³

^{2 &}quot;[T]he use of [NYSCEF] will produce cost savings for all, save time and increase the speed with which attorneys can send documents to the court and opposing counsel. The financial benefits include savings on office supplies, paper, ink, postage, and storage facilities." Report of the Commission to Examine Solo and Small Firm Practice, at 27 (2006).

³ New York County Lawyers' Association, Comments on the Report of the Task Force on Electronic Filing of the New York State Bar Association (Dec. 28, 2006) and Suggestions for the Expansion of Electronic Filing in the New York State Court System, at 12-13 (Feb. 2007).

The 2011 NYSCEF survey referred to in the body of this report confirmed these savings. The respondents reported that, in their experience, e-filing can reduce costs for the filing (76.69 %), service (80.88 %), and retrieval of documents (83.27 %).

2. Efficiencies and Benefits for Courts and County Clerk's Offices

clients, e-filing is a winning technology all around — it simultaneously brings benefits to

IMPORTANT AS ARE THE BENEFITS TO ATTORNEYS and

the courts and, in Supreme Court cases, the County Clerk, benefits that are critical in this time of continuing fiscal challenge.

The following are some illustrations of the ways in which County Clerks (and the court clerk in courts other than Supreme Court) and the court system can achieve real savings from greater employment of e-filing. The extent of these savings will, of course, vary depending upon the volume of matters processed by the Clerk or the court.

A. COUNTY CLERKS (and other Clerks)

■ E-filing will save on storage costs. When case files are stored on computer media instead of in hard-copy format on the shelves of warehouses, real savings will accrue. In time the savings in off-site storage costs necessitated by limitations of space could amount to thousands or even as much as tens of thousands of dollars per month depending upon circumstances in particular County Clerk Offices. One County Clerk reports that at the end of 2013, the office gave up half of its space at an off-site storage facility, for a savings of \$ 20,000 per year, in good part because of the reduction in the number of hard-copy filings in the county. Old records in that county are stored

- in the County archives and retained for archival purposes. The County Clerk is no longer sending civil case files to the archives, which will produce a savings of \$5,000 annually for each filing year (year of commencement).
- In some counties, the County Clerk scans hard-copy documents. E-filing, in which the electronic creation of documents occurs in the process of filing by counsel or attorney staff or participating unrepresented parties, renders scanning by the County Clerk unnecessary. Scanning costs can be eliminated, with important savings as a result. One County Clerk reports that every page filed with NYSCEF represents a savings of 18 cents to the County Clerk. Scanning costs for this County Clerk in 2014 were reduced by about \$ 150,000. The County Clerk estimates that full implementation of e-filing in the county for active cases will produce savings of over \$ 250,000 per year. In a high-volume county, tens of thousands of pages of documents are filed daily. Scanning of pages in such numbers necessitates use of heavy-duty, high speed scanners, which cost on the order of \$ 70,000 each.
- For archival purposes, some County Clerks currently microfilm or otherwise reproduce records after the files are no longer likely to be requested frequently. The cost of such reproduction can amount to tens or even hundreds of thousands of dollars per year. Sending hard-copy records to outside vendors and having them create digital images of the pages can cost \$ 70 per file box. A high-volume county could send out a thousand or even several thousand such boxes at a time for digitization of one year's worth of files. With e-filing, archival reproduction and the costs associated with it could be

- eliminated, since e-filed documents are created digitally upon their original filing and are ready for electronic preservation immediately.
- If cases are created electronically upon efiling, a County Clerk does not need to purchase the physical materials associated with the filing and storage of hard-copy documents, including specially printed and numbered file jackets, adhesive labels, index number application forms, and storage boxes. Depending on the number of new filings in a particular county, the resulting savings in the county ultimately could approach as much as \$50,000 annually. One County Clerk reports a continuing savings of over \$5,000 per year due to reduced need for file jackets.
- E-filing would substantially reduce data entry labor by the staff of the County Clerk when an action is commenced. At present, data entry clerks in the County Clerk's Office typically must key in by hand captions and other information upon the commencement of a case. Some captions can be lengthy and complicated, and entries might need to be made separately for each plaintiff/petitioner and each defendant/respondent. By contrast, upon commencement of an action or proceeding by e-filing, the efiler completes an on-line form that identifies all parties to the case as listed in the caption and indicates the party or parties on behalf of whom the filer appears. This information can be fed automatically into the County Clerk's record-keeping system, thereby eliminating the associated data entry.
- Once a case has been commenced, the

- County Clerk maintains minutes of documents filed in the case, which necessitates yet more data entry. The e-filing of these documents would produce complete data fields that would provide the basis for the generation of the County Clerk's minutes, also yielding savings in data entry expense.⁴
- At present, staff members of the County Clerk's Office typically work each day creating file folders upon the initiation of new cases, which may number, depending upon the county, in a range from the hundreds to something like 52,000 annually. The staff does the same when, during a case's life, new filings require additional folders to house the papers filed. The files are thereupon stored on the shelves in County Clerk space in the courthouse itself or in a separate County Clerk's Office, which might be located at a considerable distance from the courthouse. As additional papers are filed in a case, the staff members must receive the filings and locate the appropriate file folder in which to file the papers. When case files are needed by the justices or staff members of the court, the files are requisitioned from the record room by the County Clerk's staff and delivered to the proper place at the court. When work is completed on a file, the file must be collected and taken back to the record room and reshelved by County Clerk staff. As motion files arrive, they must be included in the case folders of the cases to which they relate. In response to requests, the staff of the record room must also make files available to the bar and the members of the public (except where the files are sealed). These files must be retrieved from the shelves,

⁴ Data entry savings would be realized both in cases that "go to court" (in which a Request for Judicial Intervention is filed) and those that are settled or become dormant before an RJI is ever filed.

made available, and then refiled on the shelves. Some case files must be retrieved from time to time from off-site storage and, after the court uses the file, returned to that storage. The staff must maintain the record room generally and any related facilities, such as copying machines. At various times, files will be selected and moved from the main storage area to long-term or off-site storage and may also be sent for microfilming or other reproducing for archival purposes. Schedules of such activity must be maintained and records kept. All of these highly-labor-intensive activities (in New York County there was recently a staff of ten in the County Clerk's Record Room) can be greatly reduced or eliminated as e-filing grows, thereby saving much staff time that can be devoted to other functions of the County Clerk's Office.

When the Appellate Divisions are included in the NYSCEF system, the County Clerk can be relieved of the burden of transporting hard-copy records to the Appellate Division, and that court will be freed of the burden of delivering the files back at the conclusion of the appellate process.

B. COURTS

The Supreme Court engages in considerable data entry in hard-copy cases. In 2013, in the 11 counties of the Fourth District, or the six counties of the Fifth District, or the five counties of the Ninth District 6,863, 8170, and 24,157 cases were commenced, respectively (Requests for Judicial Intervention filed)(not counting ex parte and uncontested matrimonial applications). Court clerks in these counties must enter data about each case into the court's case management system when the RJI is filed, and

also thereafter whenever an application is made to the court (e.g., motion, request for a preliminary conference, note of issue). As in the County Clerk's Office, to the extent that these cases can be filed electronically, there will be savings for the court on all of this data entry because identifying data entered into the e-filing system when documents are filed by counsel or participating unrepresented parties could be incorporated automatically into the court's case management system.

- When an RJI is filed with a motion or a proposed order to show cause, a motion jacket may be created to house the hard-copy papers as they make their way through the back office(s) of the court to the courtroom or chambers and the County Clerk's Office. If a case is e-filed, jackets would not need to be purchased or completed.
- When documents (e.g., motion papers) are submitted to the court in hard-copy format, they often must be filed in cabinets, calendared, and then delivered to a justice for judicial action. After the justice acts on the application, the papers are likely to be delivered to a back office for further processing, including entry of a notation in the court's case management system. Court clerks perform the functions of processing and storing papers and delivering them to courtrooms and chambers and, after judicial action, retrieving them and processing them before they are delivered to the County Clerk's Office, where they are then handled as described earlier. Copies of decisions are often mailed to counsel, as are various notices, such as notifications of conference dates. In an e-filed case, some of these steps would be unnecessary and others could be effectuated more quickly and efficiently

(such as transmission of decisions and notices to counsel, which can be done simply by posting the document to the e-filing system). A particularly important benefit accrues to the court if the complicated, labor-intensive movement of hard-copy files to the Justices and the retrieval thereof and the transit of the files through the back office(s) and to the County Clerk can be eliminated. Also, the physical movement of large numbers of hard-copy files between the County Clerk's Office and the court and within the Office and the court and their handling by many persons inevitably create the potential for the loss or misplacing of documents. E-filing eliminates this problem.

■ The processing of a long-form order submitted in response to a directive of the court that an order be settled illustrates the efficiency in processing that e-filing brings. A proposed long-form order could be submitted by counsel to the relevant back office of the court for processing and review simply by transmitting the document through NYSCEF. Opposing counsel could present a proposed counter-order in the same way. Neither would have to come to court or send a messenger. The appropriate court clerk would be automatically notified of these submissions by an e-mail from the NYSCEF system, which ensures rapid processing. The clerk can review these proposals within the e-filing system. The clerk could then forward them via NYSCEF to the assigned justice with whatever comments the clerk might wish to make or, if the justice prefers, could print out the few pages that the justice might sign. The justice could print out the order if not already done, modify it as he or she deems appropriate,

and then sign it. The justice's courtroom clerk could forward the signed order to the back office or the County Clerk electronically, and that office could then process it, including posting of it to NYSCEF, which would generate immediate notice to the parties that the order has been signed. The appropriate party could serve notice of entry of the order via the NYSCEF system, again without having to make a trip to the courthouse. This is a quicker, more convenient, and distinctly more efficient procedure for counsel and for the court than if the documents are submitted and processed in hardcopy form, delivered to and retrieved from the justice in that form, moved about the courthouse, and filed in hard-copy form with notice of entry transmitted in that way. With the elimination of mailing of notices and decisions and orders, postage and mailing costs would be reduced. Multiplying this scenario by the hundreds or thousands or even tens of thousands, depending upon the volume in the court, gives an idea of the extent of the efficiencies that e-filing can bring to a courthouse across-the-board.

- Although the expansion of e-filing would require that additional training be offered to the bar, many attorneys, as pointed out in the body of this report, do not need to take training; they need only practice for a time with the NYSCEF "Training" system, as the results of the 2011 survey confirmed. But, in any case, as e-filing becomes more familiar, such need as there may be to offer training will diminish in the natural course.
- Making case files available electronically to justices and judges and staff attorneys at nights and on weekends will increase the productivity and efficiency of the court and allow judges to exercise more effective con-

- trol over their inventories, which is a major challenge in many parts of the state due to the large caseloads in the courts.
- Beyond the savings to the attorneys and their clients, reduction in the number of trips counsel must make to the courthouse and the County Clerk's Office in Supreme Court cases will reduce the burden that rests on County Clerk staff, court clerks, security officers, and maintenance staff.

3. The Benefit to the Environment

E-FILING PERMITS ATTORNEYS and litigants to litigate cases with the same vigor they have used in the past, but with a reduced impact on the environment. Every document e-filed represents paper conserved and, ultimately, not discarded into landfills. E-filing also reduces the use of fuel that would otherwise be consumed in the filing, serving, and retrieving of hard-copy documents.⁵

⁵ The advent of photocopy machines added to the total amount of paper generated in connection with lawsuits. E-filing, in contrast, represents a second-generation technology that will minimize and almost eliminate the use of paper.

